PUBLIC LAW BOARD 6155

Case No. 36
Award No. 36
Carrier's File No. 1031113
Organization's File No. LCMCM AST96
NMB Code 106
Claimant Engineer C. R. McMasters

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Appeal of the Upgrade Level 2 Discipline assessed to Engineer C. R. McMasters and request the expungement of discipline assessed and pay for any and all time lost with all seniority and vacation rights restored unimpaired. Action taken as a result of a formal hearing held October 18, 1996.

Findings:

Upon all the evidence and the entire record, this Board finds the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction of the parties and over the dispute involved herein.

The Claimant's hire date was December 26, 1972. She was employed as a Clerk, but, was promoted to Engineer several years later.

On the day she sustained a personal injury, October 8, 1996, she was working in her capacity as Engineer on Yard Job YPC35-07. She went on duty at 11:30 p.m. on October 7, 1996, at the yard in Pocatello, Idaho. Reportedly, between 2:30 and 3:00 a.m., she detrained from her locomotive near MP 211 in order to get to a crew bus. She chose to step off the engine on the south side of Track 2 where there was a sharp incline. The crew bus was waiting at the bottom of the hill to transport the crew. When the Claimant stepped off the engine, she twisted her ankle. She

failed to report the incident at the time because she did not believe she had injured herself. However, at around 7:30 a.m., she did contact the Manager of Yard Operations and indicated that her ankle was swollen and painful.

As a result of the injury, the Claimant was asked to submit to a drug screen test and did miss work. The drug screen was negative.

By certified mail the Claimant was sent a Notice of Waiver/Hearing Offer dated October 11, 1996. She was advised that her actions on the day of the accident conceivably violated Rules 70.1, 1.1.1 and 1.1.2 of Union Pacific Rules, effective April 10, 1994. She was offered a waiver of hearing with a Level 1 Discipline, elevated to a Level 2 Discipline, because her injury resulted in lost time. The Claimant rejected the waiver and requested an Investigation, which was held on October 18, 1996.

After reviewing the evidence presented at hearing, the Carrier declared the Claimant guilty of having violated the cited rules, which read in part:

Rule 70.1 Safety Responsibilities

Employees are responsible for their personal safety and are accountable for their behavior as a condition of employment. Employees must take every precaution to prevent injury to themselves, other employees, and the public. Employees must report any dangerous condition or unsafe practice.

Employees must be aware of and work within the limits of their physical capabilities and not use excessive force to accomplish tasks. Good judgment is required in fulfilling job responsibilities safely.

Past practices that do not conform to the rules are unacceptable.

Rule 1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

1.1.1 Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

1.1.2 Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

The Carrier issued the Claimant a Level 1 Discipline for the rules infraction. However, it was increased to a Level 2 Discipline because the injury caused her to miss work.

The Organization appealed the discipline through the proper channels and it is now before this Board for its ruling.

CARRIER'S POSITION

The Carrier claims there was adequate warning about the safety concerns centered around the ballast in the yard. They believe the Claimant could have used a different alternative to get down off the engine. For one thing, they claim, she could have disembarked on the other side of the engine where there was a flat walk way. They assert she may have also avoided injuring her ankle if she had been wearing footwear that had more than just the minimum safety requirements.

The Carrier contends the Claimant was afforded a fair and impartial hearing. The discipline issued, they say, was in keeping with the Upgrade Policy and was reasonable in light of the rule infraction.

ORGANIZATION'S POSITION

The Organization argues the Upgrade Policy used by the Carrier resulted in excessive discipline. In addition, they believe the policy is unfair and prejudges employees by its very nature. They say the employees feel threatened and afraid to fill out the injury reports required by rule for fear they will be disciplined.

They maintain the Claimant's accident was just that an unfortunate accident. They believe the Carrier must accept its share of the blame since it was well known the ballast in the yard was unsafe, but, the Carrier failed to rectify the problem. Moreover, they say it was common knowledge that many crews would

not work in the area at night, not only because the terrain was hazardous, but, also because of poor lighting. They say the Carrier could and should have assured proper lighting in the area. The Organization insists the Carrier has the authority and responsibility to correct hazardous situations before accidents occur. After all, they assert, the Carrier is responsible for providing a safe work environment and should have taken the necessary steps to correct the hazardous conditions in this area. The Organization further maintains that the area in question is so dangerous other crafts refuse to work there. They point out that it is dark without artificial light and the tracks are close together with trains entering and leaving the area at 70 mph. They say the Claimant may have been assisted by a lantern or flashlight, but, the Carrier has failed to issue such equipment to Engineers.

The Organization also raised several procedural arguments. For one, they say the Hearing Officer asked leading questions of Company witnesses. They also protested the fact at least one witness they requested was not present to testify. They also maintain the Carrier erred when it subjected the Claimant to a probable cause drug screen. The Organization also protested the admission of notes into the record when the author was not available for cross examination.

Furthermore, the Organization argues that if the Claimant had dismounted the engine on the north side she would have been in violation of Rule 81.4, which reads in part:

. . .

When practicable, get on or off equipment on the side away from the main line or close clearance.

For all of these reasons, the Organization submits the discipline issued to the Claimant should be rescinded.

DECISION

The Board must decide whether the Claimant did a prudent thing in detraining on the side of the locomotive where there was a sharp incline. In reviewing the photographs submitted by the Carrier two things are obvious. The first is the close proximity of tracks 1 and 2. The other is that there were two piles of ballast between the two tracks. Even though there seemed to be testimony that the area between the two tracks was more level, this Board does not believe it was so level there was any

assurance the Claimant would not have slipped getting down on that side of the track. Furthermore, if she had she could have fallen onto the adjoining track placing her in serious danger; particularly if she had hurt herself to where she could not have moved out of the way quickly. True she may have been able to see a train approaching before she got down off the locomotive, but, the question we have to ask is whether it was imprudent for her to choose to get off on the other side since Tracks 1 and 2 were so close. We think not. The Board is simply not convinced that the ballast between the two tracks was so much safer she had an obvious choice. Furthermore, if she had fallen between the two tracks, the chance of an even more serious situation existed. Therefore, we do not believe the decision made by the Claimant to dismount on the south side of the locomotive was so unreasonable as to warrant discipline.

AWARD

The claim is sustained.

Carol J. Zamperini
Impartial Neutral and Chairperson

Submitted this 14th day of January, 2000.