

PUBLIC LAW BOARD NO. 7357

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 38
Case No. 38

-and-

Delaware and Hudson Railroad Company d/b/a Canadian Pacific Railway

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that

1. The thirty (30) day unpaid suspension assessed Mr. Jack Teeple by letter dated July 10, 2013 is in violation of the Agreement.
2. As a consequence of the violation referred to above in Part 1 above, we request that discipline be removed from Claimant Teeple's record and he be compensated for all losses suffered due to the Carrier's improper discipline.

FINDINGS:

This Public Law Board No. 7357 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated July 10, 2013 the Carrier notified the Claimant, Mr. Jack Teeple, that he was assessed a thirty (30) day unpaid suspension as follows:

Dear Sir:

As a result of the facts developed at the formal investigation hearing, Friday, June 21st, 2013 you have been found to be Violation of OTS Rule 25.3.3, GCOR Rules 1.1.1, 1.6.1, 1.6.2 & GCOR 8.3. Whereby a switch was left in other than normal position on the Controlled Siding at Taylor, PA on June 16th, 2013.

You are hereby given 30 (thirty) day unpaid suspension per Policy 5612 from Canadian Pacific Railway. Effective on the date of receiving this notice.

S/Todd Dragland – Division Engineer – Northeast US Division

The Organization appealed the discipline, and the matter has been progressed to this Board for adjudication.

By letter dated June 17, 2013 the Claimant was notified that he was taken out of service, pending the outcome of a Formal Investigation related to an alleged incident while handling switches in Taylor, PA on the Controlled Siding, Sunday, June 16th, 2013. And by letter dated June 17, 2013 Mr. Teeple was notified of the charge against him as follows:

...The purpose of this investigation will be to determine your responsibility, if any, for an alleged incident, whereby a switch was left in other than normal position on the Controlled Siding at Taylor, PA on June 16th, 2013.

On Sunday morning, June 16, 2013 Train 458-16 advised the Chief Train Dispatcher that the switch from the controlled siding to the north end of Taylor Yard appeared to be improperly lined for the yard. The Dispatcher had Train 259-16 stop at Taylor and the crew confirmed that the switch was lined for the yard, and Train 259-16 then lined the switch for the siding, restoring it to the normal position. The last CP Rail movement to handle the switch was the foreman team of Jack Teeple and Patrick Robinson. Foremen Teeple had cleared the controlled siding into the yard with a rail grinder at 06:40 on the morning of the 16th. Chief Train Dispatcher Jon Gutzler provided the above information to Carrier Management in an e-mail along with a recording of Foreman Teeple's releasing his track and time to the dispatcher.

An hour and thirty five minutes passed between the time the Claimant left the track and the time Train 458-16 observed that the switch in question was open. Moreover, a switch key was found 150 feet from the switch and turned into Road Foreman Marty Quinn. There was testimony about Taylor Yard being notorious for four wheelers and trespassers; and it was contended that a trespasser could have found the key and sought to see how it works on the switch in question [See Tr. 32, 49].

Mr. Teeple testified and Mr. Robertson testified that the switch was left in the proper position. That it was confirmed in the high rail truck that the controlled siding was lined, locked and checked. Mr. Teeple testified that after all of the work was done, that Mr. Robinson said that all the switches were lined, locked and checked. Mr. Teeple was asked by the Hearing Officer:

Q. Okay. And did you repeat that any switches were lined, locked, and checked to the dispatcher when clearing up?

A. No, I didn't repeat it and the dispatcher didn't ask. (Tr. 46)

We find that Mr. Teeple was properly removed from service pending the investigation involving a possible serious infraction. He was properly notified of the hearing and the subject of the investigation. The transcript of the hearing made clear that the team of Foremen Teeple and Robinson operated the switch on the north end of Taylor Yard off the control siding into the yard; and Train 458-16 reported that the switch was improperly alleged after the Teeple/Robinson crew had released their track and time to the dispatcher.

On Track Safety (OTS) Manual 25.3.3 states:

3. If the main track authority to occupy the main track is being released to the train dispatcher or control operator where a hand operated switch was used to clear the

main track, the employee will state that the switch is LINED, LOCKED and CHECKED for normal position. This information will be repeated to the train dispatcher or control operator during release of their main track authority.

Mr. Teeple was clearly in violation of OTS 25.3.3 as set forth in previously quoted testimony:

Q. Okay. And did you repeat that any switches were lined, locked and checked to the dispatcher when clearing up?

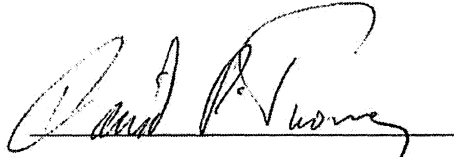
A. No, I didn't repeat it and the dispatcher didn't ask.

We find that GCOR 8.3 and OTS 25.3 were violated, with the control siding and main track one and the same, controlled by the train dispatcher, and under the rules must be lined in the normal position.

Assertions about the possibility that a trespasser could have found a 109 switch key and thrown the switch in an hour and thirty five minutes period is remote and speculative. We find that substantial evidence of record, supports the Carrier's finding of responsibility in this case. Mr. Teeple was the foreman that was issued the track and time authority and had responsibility to ensure the switch was in the normal position and failed to do so, and was assessed a thirty day actual suspension while Foreman Robinson, the other half of the leadership of this special crew who was responsible to throw all the switches behind Mr. Teeple, was assessed a 10 day actual suspension. Strictly limited to the narrow facts of the record, we find the disparity in treatment to be arbitrary, and accordingly we reduce Mr. Teeple's 30 day suspension in this case to a 10 day actual suspension to reflect the unusual facts of this particular record. Mr. Teeple's suspension shall be modified to a 10 day actual suspension, and he shall be made whole accordingly for time lost.

AWARD
As per Findings.

ORDER: The Carrier is required to comply with this award within thirty days.


Chairman and Neutral Member
Carrier Member
Organization Member

Dated: 12/28/2016