

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7408**

Parties to Dispute:

UNITED TRANSPORTATION UNION

vs.

UNION PACIFIC RAILROAD COMPANY

**OPINON AND AWARD**

Case No. 57

Claimant R. R. Schochenmaier

Level 3—1 Day Training

**EMPLOYEE'S STATEMENT OF CLAIM:**

Claim for Union Pacific Railroad Company Foreman R. R. Schochenmaier that all notations of Level 3 – one day unpaid training – discipline be removed from his personal record, and that he be compensated for all lost time and benefits as a result of this matter, including but not limited to time lost while attending the investigation, all wage equivalents to which entitled, vacation benefits, and all insurance benefits and monetary loss for such coverage while improperly disciplined.

**PREAMBLE:**

Awards issued pursuant to terms and conditions outlined in the Agreement establishing this Expedited Board of Arbitration (Board) will not prejudice the rights of either party, will not establish any precedent and will not be referred to in connection with any other case, agreement and/or dispute resolution.

**FINDINGS:**

Based on the evidence, the Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing was given to the parties.

By Notice of Formal Investigation dated October 6, 2009, Carrier informed Switchman R. R. Schochenmaier (Claimant) that Claimant's alleged actions caused two cars to derail at approximately 1:10 a.m. on September 30, 2009 while employed as Foreman on Train YCB32R-29 in Council Bluffs, Iowa. The letter requested Claimant, an employee with approximately 4½ years of service, to attend a formal investigation.

The hearing was held on October 12, 2009 in Council Bluffs, Iowa. As a result of testimony and evidence adduced at the hearing, Carrier determined that Claimant had violated Operating Rule 7.1 and, by letter dated October 20, 2009, notified Claimant that a Level 3 Violation, one day training without pay, was assessed. The letter instructed Claimant to develop a Corrective Action Plan. The Organization appealed Carrier's action by letter dated January 21, 2010 to Carrier's Assistant Director of Labor Relations, D. B. Foley. By letter dated March 8, 2010, Carrier declined to reverse the decision of its Hearing Officer. The matter now is before this Board for final and binding determination.

Claimant was assigned as yard foreman on remote control yard assignment on the train described above. While the crew was performing yard switching operations, Claimant was the primary operator controlling the movement of 22 cars being pulled from Elevator 2 Track to double over to Elevator 4 Track to make up an outbound train. When Claimant made the coupling, two cars derailed, causing about \$3,000 in damage to the equipment. Rule 7.1 provides in part, "While switching, employees must work safely and efficiently and avoid damage to contents of cars, equipment, structures or other property."

Manager of Yard Operations D. R. Erdei was called to the scene following the event to assess the damage and to interview the crew. Erdei testified that, once at the scene of the incident, Claimant indicated he had placed his Remote Control Transmitter (RCT) in speed selector four until reaching a location about two car lengths from the coupling. According to Erdei, Claimant stated that he then placed the RCT in the coast position and then in the stop position. Erdei stated that the impact caused two empty covered hoppers to leave the rail, fouling three adjacent tracks and damaging equipment. Erdei introduced photographs which demonstrate the incident and the damage sustained by the equipment.

Rule 7.4.1 provides in part, "Make couplings at a speed of not more than 2 MPH. Remote Control Operator must use speed selection of not greater than 'Couple'." Erdei stated that going from 4 mph to coast and then to stop just prior to coupling caused slack action to be located at the joint and the train to derail. Erdei testified that Claimant told him that he placed the RCT in the stop position just prior to coupling, and, "He just said right before he went to the joint he went to stop, and that he'd made the joint a hundred times before, and that's how he makes his [] joints."

Several other witnesses testified, including G. J. Hoelting, who was the manager on duty. Hoelting explained that excessive coupling speed caused the derailment and testified that, “the two empties out of the four was in the middle on a curve, and that’s when the cars kicked sideways to the south and derailed.” Hoelting concluded that the empty and loaded cars “caused it to pinch together and kicked out to the side.” Hoelting stated that an RCL operator is supposed to be aware of the loads and empties to maintain proper control. Claimant gave a different version of events from that of Erdei and of Claimant’s 705 report prepared immediately after the incident. Claimant’s explanation was not persuasive, “I was a little distraught over the incident, so my mind wasn’t too clear on the details[.]”

The Board finds that the Carrier has demonstrated by substantial credible evidence that the derailment was caused by an excessive rate of speed during coupling operations. The testimony of Erdei and Hoelting, and the photographs of the scene following derailment together with the laws of physics all suggest that the derailment was caused by excessive speed. However, the record indicates that neither of twin event recorders functioned; they did not allow for downloads of actual speeds. While the results might have been helpful, the Board finds their absence does not prevent a fair investigation.

The Board sustains the Level 3 discipline, but the facts warrant mitigation. The basis for mitigation is 1) the dual failure of the digital event recorders and 2) the absence of maintenance reports for the remote control devices, both under control of Carrier, together with 3) a conflicting eyewitness statement; and, in addition, 4) testimony that Claimant was one of the “better employees in the yard” who could be trusted “to work safely and efficiently”. The Carrier is directed to pay Claimant for one day of training and to compensate Claimant for all lost time and benefits as a result of this matter, including but not limited to time lost while attending the investigation, all wage equivalents to which entitled, vacation benefits, and all insurance benefits and monetary loss for such coverage.

**AWARD**

The claim is denied consistent with the above mitigation and findings.

*/s/ Ezio E. Borchini*

**Ezio E. Borchini**

**Chairman and Neutral Member**

**Dated at Washington, DC  
July 10, 2010**