

PUBLIC LAW BOARD NO. 6540

AWARD NO. 18

CASE NO. 18

Organization File: D010328.2

Carrier File: 71-01-0643

PARTIES TO
THE DISPUTE:

Brotherhood of Locomotive Engineers

vs.

The Burlington Northern Santa Fe Railway Company

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained.

STATEMENT OF CLAIM:

"That Engineer Richard Banasik's discipline be reversed, that he be made whole for any and all time and benefits lost, including time attending the investigation, and that the notation on his personal record as a result of this incident be removed."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant received a Level S 30-day disciplinary suspension and a 3-year probationary period in connection with the derailling of a car at LaCrosse, Wisconsin shortly after noon on July 27, 2001. He was cited with violating Rules 2.13 and 7.4 of the General Code of Operating Rules. They relate to the coupling of cars during a shove. At the time of the Carrier's action, Claimant had more than twenty-eight years of service.

The basic facts are not in dispute. Claimant's train, consisting of 57 cars totaling 3,916 feet in length including consist, was required to shove westward some 3,000 feet on Track 102 to couple to a single car standing on the west end of the track. Maintenance of Way forces had blocked the track behind the target car to provide protection for other workers farther to the west. This required the placement of red flag protection as well as a derail device to the west of the target car. The yardmaster knew of the required track protection procedure but did not inform Claimant or his conductor about the existence of the track protection behind the target car. The yardmaster assigned a utility man to work with the crew during the shove to the coupling. The yardmaster did not inform the utility man of the existence of the protection either. The utility man was in control of the shove by radio. After arriving in the vicinity of the target car by vehicle, the utility man noticed the presence of the red flag protection but did not see the derail device. Nevertheless, he did not warn the Claimant or the conductor of the protection during his radio communications. Thus, the Claimant began the shove as directed by the utility man and was totally unaware of the situation behind the target car.

According to the statements and testimony of the utility man, Claimant received radio instructions from 40 cars to go, then 20, 10, 5, 3, 1, and then "That will do." The conductor recalled the same car length instructions including one for 2 cars to go. Claimant's testimony recalled

distances of 40, 20, 10, 5 and 1 before the stop instruction but he admitted he was busy controlling the air to stop the shove.

According to the utility man, after he gave the stop instruction, the "... train made the joint, slack rolled out and pushed the car through red flag and over derail. Car's rear trucks derailed."


The Carrier's road foreman of engines read the locomotive speed tapes and introduced the printout into the record. According to his testimony, the amperage settings were not excessive considering the weight of the heavy train. In his view, the tapes showed a typical shove with a controlled stop; it appeared that Claimant had control of his train in a safe, efficient manner. While the tapes showed speeds as high as 8 mph during the shove, which decreased to zero as the locomotive stopped, he could not determine how much farther the runout of the slack would have taken the distant cars or at what speed they would have been traveling at the moment of coupling contact with the target car.

Our review of the record fails to reveal substantial evidence in support of the Carrier's determination that Claimant violated Rules 2.13 and 7.4. There is no proper basis for finding that Claimant failed to stop the shove within half the distance from the most recent radio instruction in the event of lost communication as required by Rule 2.13. There is no evidence that lost communication was ever a factor in this matter. To the contrary, the record provides no rational basis for concluding that Claimant did not receive almost continuous communication as he slowed the shove. Moreover, there is no proper basis for determining that the coupling occurred at more than 4 miles per hour, which is the limit specified by Rule 7.4. Any conclusion about speed at this point in time is purely conjectural on this record. Speculation and conjecture do not constitute substantial evidence.

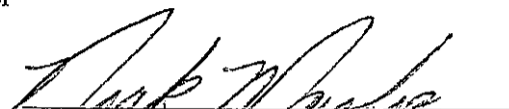
Given the unique facts of this record, we find no proper basis for upholding the discipline.

AWARD:

The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


Stephen D. Speagle,
Organization Member


Nick Markos,
Carrier Member

Date: 6-1-04