

PUBLIC LAW BOARD NO. 6942

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION)	
)	
and)	NMB CASE NO. 1
)	AWARD NO. 1
)	
UNION PACIFIC RAILROAD CO.)	

STATEMENT OF CLAIM

Claim of Conductor James Ray Kunerth for removal of Level 2 discipline assessed against him for running through a switch at La Grande, Oregon that was lined against his movement on September 12, 2004.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

On September 12, 2004, the Claimant was working as a crew member on train MNAHK-11. On that morning, while they were making a set out in the LaGrande Yard to track #3, he told his engineer to proceed through the crossover between Yard Track 1 and Track 125. However, while the crossover was underway, the Manager of Yard Operations discovered that the trailing crossover switch was aligned against his movement. Before the Manager could stop the train, eight or nine cars had gone through the switch. There was no derailment, but there was damage to the switch and tracks. After a hearing at Nampa, Idaho on October 13, 2004, the Claimant was assessed a Level 2 discipline.

The Organization made two arguments in support of the claim to remove the discipline.. First, it argued that he did not receive a fair and impartial hearing because the Carrier failed to call the Claimant's engineer to testify at the investigation. Second, it contended that the accident was the fault of the Carrier because it failed to properly train the Claimant before assigning him to work as a conductor.

Neither of these arguments is persuasive. So far as the failure to call the engineer is concerned, the Carrier concluded that he had not seen the accident and therefore had nothing to contribute to the investigation. The Organization never requested that he be produced by the Carrier at the hearing nor did it call him as its own witness as it was entitled to do. Therefore, this claim must be dismissed.

On the question of whether the Claimant received adequate training, he was a relatively new employee at the time of the incident; in fact, this was his first trip as a full conductor. However, prior to being given that assignment, he had received three weeks of classroom training, seven weeks as a student conductor and two weeks as a conductor in training. There is no doubt that it takes years before a person is fully trained as a thoroughly qualified conductor. However, it is not possible for a carrier to allow an employee to remain as a student or assistant for that entire period of time. Management must make a decision as to when a new worker is sufficiently trained to begin to work as a conductor on his own, balancing the amount of training he or she has received and the practical needs of the workplace. Although several other new conductors in the Claimant's class submitted statements that they would like to have received more training before being asked to become full conductors, there was no showing that the Carrier acted arbitrarily or capriciously in concluding that they were sufficiently competent to take responsibility for the job after twelve weeks of classroom and on-the-job instruction. Therefore, this argument must also be denied.

AWARD

The claim of James Ray Kunerth for removal of his discipline must be, and it hereby is, denied.

Neil N. Bernstein

NEIL N. BERNSTEIN, Neutral Member

R. Henderson

R.A. HENDERSON, Carrier Member

Richard M. Draskovich

RICHARD M. DRASKOVICH, Organization Member

Award Date: May 26, 2006