

PUBLIC LAW BOARD NO. 6942

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION)	
)	
and)	NMB CASE NO. 8
)	AWARD NO. 8
)	
UNION PACIFIC RAILROAD CO.)	

STATEMENT OF CLAIM

Appeal filed on behalf of employee D. K. Corbet, EID 0157725 and M. W. Lopez, EID 0411749, as a result of the formal investigation held on November 30, 2004 at Ogden, Utah resulting in Level 3 discipline (five day suspension) for failure to secure cars before coupling into and moving them, resulting in an uncontrolled movement of two cars through a clear track and a collision with another train, on November 11, 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 November 11, 2004, the Claimants were working on the night shift in Carrier's Ogden yard. Their second job that night was to shove and couple several cars together on Track 115, then pull them back south and begin switching the cars into the proper tracks according to the switch list they were given. At some point in the assignment, they ascertained that they did not have two of the cars on that list but they had three additional cars that were not on the list. According to all witnesses, that was not an unusual situation. While they were doing their work, their foreman received a call from the dispatcher asking whether they had switched any cars onto Track 28. He indicated that they had switched two cars there and they were sitting in his sight. The dispatcher then told him that two different cars had apparently rolled down Track 28 and had struck a train at the north leg of the "y" with Track 104. The foreman and a Claimant went to investigate the crash and discovered that the two cars involved were the cars that had been on their switch list but they were unable to find. No members of this crew had seen these cars prior to the time they were found at the crash site.

The Carrier began an investigation and after a simulation concluded that the two cars, as the northernmost cars on Track 115, could have been standing in a flat spot without being coupled to other cars and with their brakes off. In they were in a flat spot, they would not

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normally have rolled down the track. However, if the crew in the process of gathering the other cars on their list for switching, caused one of those cars to bump into the northernmost cars, that could have caused those cars to roll down Track 28. When the Carrier ascertained that the Claimants had not checked the northernmost cars on Track 115 (which could have been the cars involved in the crash) prior to gathering to determine whether they were coupled or had their brakes on, it concluded that the Claimants violated Rule 7.4 and assessed the discipline that is the subject of this case.¹

The Organization argues that the discipline should be set aside for two reasons. First it saw the Hearing Officer and the Charging Officer talking privately prior to the hearing and it claimed that the Hearing Officer was coached in this private conversation. Second, it contends that the Carrier failed to establish that the Claimants were in any way responsible for the accident in question.

The Board is unable to find that the Hearing Officer denied the Claimants a fair and impartial hearing by talking privately to the Charging Officer. The Hearing Officer stated that he was not familiar with the Ogden Yard and the Charging Officer only showed him a map of the yard so he could get an understanding of the layout. Although it would have preferable for the Hearing Officer to have included the Organization Representative in this discussion, his failure to do so did not invalidate the proceeding.

The claim that the Carrier failed to establish the Claimants acted improperly is a very different matter. The hearing testimony indicated that the day shift had placed these cars on Track 115 and, according to a member of that crew, had set the brake on the first car and that the second one had been coupled to the car behind it. There was no claim from the Carrier that either of the Claimants had released the brakes or uncoupled these cars. Nor was there any evidence that the Claimants did anything to cause them to roll or even that they had rolled during the time that this crew was working on the Track 115 assignment. The Carrier based its conclusion in part on the fact that a member of another crew who had working in this area had supposedly told management that they had cleared Track 28 shortly before the accident was discovered, which was contrary to what the Claimants' foreman testified that the foreman of the other crew told him. Beyond this statement, the Carrier rested its case almost exclusively on a simulation that established that, if the two cars had somehow become uncoupled and had their brakes released in some mysterious manner, and had thereafter been standing a flat spot, it would have been possible for the cars to have rolled down the track after being bumped. This hypothetical scenario is certainly possible, but there was nothing to prove that it actually happened or that the Claimants were responsible for it. On that limited evidence, the discipline in question cannot stand.

¹ Their foreman was not charged because he was working on a different track at the time

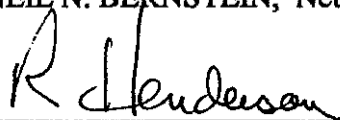
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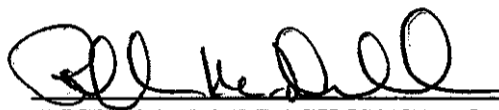
The Board sustains the appeal from the discipline against the Claimants. That discipline should be expunged from their personnel records and they should be compensated for any wage loss they sustained as a result of the Carrier's action.



NEIL N. BERNSTEIN, Neutral Member



R.A. HENDERSON, Carrier Member



RICHARD M. DRASKOVICH, Organization Member

Award Date: May 28, 2006