

PUBLIC LAW BOARD NO. 6942

**Case No. 25
Award No.**

25

PARTIES TO DISPUTE: United Transportation Union

And

Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of Yardman R. L. Dunlap for removal of a 5-day suspension and Level 2 discipline from his personal record with pay for all time lost, including time spent attending the investigation, vacation benefits, and payment for all wage equivalents to which entitled, with all insurance benefits and any monetary loss for such coverage while improperly disciplined, without regard to any outside income that may have been earned by Claimant during such period of time.

FINDINGS: Upon the whole record and all of the evidence, this Board finds as follows:

That the Carrier and Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the parties and subject matter involved.

The following facts were developed in the course of a disciplinary investigation held on April 27, 2005, wherein the Charge against Claimant was as follows: "While working as West Hump SW1 Helper on the p28r-11 on 4-11-2005 at approximately 1745 CST you- you(sic) allegedly did not properly review your job brief to ensure your understanding with which track you were alle-(sic) to be aligned to for your next move to the Rip Track. You also allegedly did not check for the proper indication for the position of the switch resulting in the UP 3102 RCL unit to derail.":

Claimant testified that on April 11, 2005, he was on duty at Carrier's North Platte, Nebraska, Hump Yard as Helper on the crew of P28R-11; that Mr. A. R. McCreery was Foreman of P28R-11 and that a student trainman was assigned to the crew of this job.

Claimant further testified that the crew, as part of its assignment, was to place cars into a track known as the Hog Track then proceed to the RIP (Repair-in-Place) track to pick up another group of cars which were to be set out in track 119 of the Hump Yard. Since all of their train had been set out in the Hog Track, the crew was proceeding to their RIP track assignment with locomotives only.

Carrier Witness Seachord testified that, in order to get to the RIP track, it was necessary for the crew to operate a hand thrown switch to allow the crew to emerge from the Hog Track, then proceed through that switch far enough to allow them to reline that switch so that they could proceed to the RIP track. In gaining enough room ("headroom") to clear the hand thrown switch, the engine had to move through an electrically operated switch which was under the control of the West Hump Foreman who is stationed in the Hump Tower. The electric switch is protected by a special electrical circuit which senses movement on or within a specified distance of the switch.

Mr. Seachord further testified that, in his investigation of this incident, the West Hump Foreman had told him that no one from the crew of P28R-11 had contacted him to advise that P28R-11 was going to come out of the Hog Track and that the West Hump Foreman was in the process of re-aligning the electric switches for the next movement which he did know about. As the switch was being re-aligned, P28R-11 occupied the special sensing circuit causing the electric switch to stop its re-alignment before completion. With the switch only partly aligned, the locomotive of P28R-11 derailed as it passed over the switch while gaining headroom for its next move.

Finally, Mr. Seachord testified that the Hump Tower Foreman was to be contacted by crews operating as was P28R-11 before any moves were made; that Claimant's responsibility as a member of the crew of P28R-11, was "to know and understand all the moves and to know that the proper Communication has been moved before beginning any job or task"; and that "...is also part of his responsibility, his knowing for sure the position of the switch before allowing a unit to pass over."

P28R-11 Foreman McCreery testified that he was operating the locomotive units of P28R-11 in a westward direction by remote control at the time of the derailment but had gotten off the lead locomotive, and had walked some "15feet, maybe 20" in an easterly direction towards the hand thrown switch, through which P28R-11 had just moved, to re-line that switch for their eastward movement. Foreman McCreery also testified that he had attempted to contact the West Hump Tower about the crew's move but had gotten no answer.

Claimant Dunlap testified that the only briefing which he had had concerning the moves which were to be made was at the beginning of his shift and then he was briefed that, "...we were coupling up 60, doubling that to the Hog Track. After we got done shoving that into the Hog Track we were heading to the RIP tracks to pull the Rip." The only other information which he had gotten came, apparently, from

the West Hump Tower by which the crew was advised that another train would be coming through the tracks which they would be using for "headroom". The movement of that other train was not made known to Claimant in the initial briefing.

With regard to his position and that of the Foreman and student at the time of the derailment, Claimant testified that he was sitting in the Engineer's chair of the lead locomotive unit from which he was trying to explain their movements to the student. From that position he could see his Foreman, who was positioned on the front steps of the same locomotive unit (at least until the locomotive emerged from the Hog Track).

Claimant testified that he was aware that he was required to comply with the rules, regulations, special instructions, and local instructions while employed with Union Pacific and acknowledged that he had been examined on the General Code of Operating Rules. He testified that he did have an understanding of the requirements of job briefings: i.e., "I have to have an understanding of the movements to be made"; but also testified that he did not know "100 per cent sure" that the crew would have to contact the West Hump Foreman for instructions before P28R-11 could come out of the Hog Track; did not hear his Foreman attempt to contact the West Hump Foreman to get permission to move; did not know what route their locomotive would take in gaining the necessary headroom (hence what the appropriate switch point indicator signal would show) once they left the Hog Track; and did not know the difference between a formal job briefing and an on-going job briefing. Claimant did testify that, "It is not uncommon to have one job briefing for two or three different moves and then to re-brief when you get new moves or if something changes in a move."

In light of the testimony and evidence developed at the investigation, Claimant was found to have violated Item 17, System Special Instructions (SSI) and General Code of Operating Rule 8.2. He was assessed Level 2 Discipline, "which is five days off work without pay and you will be placed at the Conference Level in the Behavior Modification Matrix with a 24-month recovery period."

The essence of SSI Item 17 is contained in Step 1, C.1. to wit: "Group Assignments. Remember that the whole crew is a team and will be held jointly responsible." To this Board, those few words mean that if a crew member (Claimant) is not "100 per cent sure" that contact with the Hump Foreman is necessary before a move is made, it is his responsibility to become "100 per cent sure", especially when he has not heard his foreman contact the Hump Foreman for permission to proceed. It also means that Claimant is equally responsible with other crew member(s) for asking the "how" and "why" questions (SSI 17, Step II, C, 2) which develop the specific information which will be needed to perform his job correctly, especially when conditions change during the performance of an already briefed task, i.e., the passage of a preceding train on tracks which P28R-11 was to use. In this case, it is clear to the Board that there was sufficient evidence adduced at the hearing, most of which was provided by Claimant himself, to support Carrier's finding that

Claimant failed to have, in his words, "an understanding of the movements to be made"; hence, failed to comply with the requirements of SSI 17.

It is clear from the testimony of Foreman McCreery that he had left his position on the front steps of the lead locomotive about the time that P28R-11 emerged from the Hog Track and was walking in the opposite direction of the "headroom" movement being made. That left Claimant and the student as the only occupants of the lead unit and in the best position to determine that the points of the switch through which they would be passing were not properly lined. Claimant, had he noticed that Mr. McCreery had left his position on the steps of the lead unit, could have interrupted his training and positioned himself to observe the condition of the switch through which the locomotive would be moving. Carrier's General Superintendent was, therefore, justified in concluding that, as the crew member and by far the most experienced of the two men on the cab, Claimant was responsible for compliance, yet failed to comply with Rule 8.2, which requires that, "When possible, crew members on the engine must see that the switches and derails near the engine are properly lined."

The Organization did not challenge the fairness of the hearing held with Claimant or contend that handling on the Property was not in accordance with governing contract provisions. Accordingly, the Board deems these requirements to have been met.

The Organization did not contest the quantum of discipline during handling of this matter on the Property, i.e., did not take the position that the amount of discipline assessed was, on its face, arbitrary, discriminatory or capricious. The Organization did take the position that Claimant was not proven to have been guilty of the charges brought against him; accordingly, any discipline was undeserved and unjust. For the reasons stated above, the Board disagrees with the position of the Organization in this matter. There was substantial evidence developed at his hearing that Claimant was guilty of the charges brought against him.

The Organization has also taken the position that Foreman McCreery, having accepted responsibility for his actions and inactions in this incident, has thereby absolved Claimant of any responsibility for the derailment. The Board disagrees. The rules which Carrier applied in this case clearly require that all crew members be aware of conditions which affect or might affect the tasks which they are assigned; Claimant cannot escape his responsibility just because another crew member accepts his own responsibility. (As for Award No. 53 of Public Law Board No. 5390, which the Organization cites in support of its position, the Board finds that, in that case, a specific task was assigned to one crew member, not to the crew as a whole as is the case in this dispute; accordingly, Award No. 53 is not on point in this case.)

AWARD: The Claim is denied.

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Awd NO. 25

David J. Rutkowski, Neutral Member

Robert A. Henderson, Carrier Member

Richard M Draskovich, Employee Member