

BEFORE PUBLIC LAW BOARD NO. 6942

UNITED TRANSPORTATION UNION

vs.

Case 30

UNION PACIFIC RAILROAD

PETITIONER'S STATEMENT OF THE CLAIM

"Claim of Yardmen D.G. Schlesener and D.W. Marks for removal of Level 3 discipline from their personal records 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 Claimants during such period of time.

ISSUES

1. Did the Carrier have substantial evidence to support the finding that the Claimants violated rule 7.1 and/or 7.7 on June, 2005?
2. Was the 5 day suspension imposed arbitrary or excessive?

POSITIONS

ORGANIZATION

The Carrier lacks substantial evidence to support the alleged violations. MRO Mullin and Claimants and their engineer testified that they complied with all rules, including rules 7.1 and 7.7 on the date in question. The incident caused no damage to the contents of the rail cars or tracks. The assessment of discipline was arbitrary and excessive because the Carrier failed to establish substantial evidence that a violation occurred.

CARRIER

There were no procedural objections. The MRO produced a reader tag which was dislodged from one of the cars and was found at the scene of the collision. The evidence established that only the Claimants' crew was working the day of the incident.

DISCUSSION

Claimants were crew members of YSN 48-19 on June 19, 2005, performing switching operations at the Salina Yard. Shortly after the close of their shift, other employees reported that there was a damaged tank car in the yard. Manager of Road Operations R.K. Mullin investigated the matter and ultimately concluded from the facts and circumstances that two cars (the other a gondola) had corresponding damage. He further concluded that the damage had occurred during switching operations by the crew of YSN 48-19 and charged the two and the engineer with violations of Operating Rules 7.1 and/or 7.7. The investigation was held on July 5, 2005. The two were found guilty, but the engineer was acquitted. The Hearing Office sustained Level 3 discipline against the two.

There is substantial evidence this occurred. The Carrier offered testimony from which the Hearing Officer could reasonably believe:

1. The tank car and gondola arrived at the yard undamaged.
2. YSN 48-19 was the only crew to switch or operate near the cars.
3. Both the gondola and tank car which were in close proximity to each other had fresh and corresponding damage.
4. The AEI from the tank car was found and track 4 which was probably the site the damage occurred.

The Hearing Officer applying his technical expertise could reasonably draw the conclusion that there were no other reasonable explanations other than the two failed to observe that the gondola was not clear when they shoved the tank car. Accordingly, the Carrier has established substantial evidence that the damage occurred during switching operations performed by the crew of YSN 48-19.

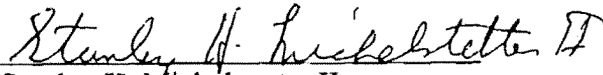
Rules 7.1 and 7.7 assume that the employee must be vigilant. It is believable that both Mr. Schlesener and Mr. Marks did not know the collision occurred. Nonetheless, this accident could only have occurred had they failed to maintain the required vigilance or insure that the other was maintaining vigilance.

There is no question that Claimants ordinarily have operated in compliance with the rules. Nonetheless, it takes only one time to make a mistake. It does appear that both employees erroneously assumed that the other was watching to insure the cars were clear.

#### AWARD

This award will become final unless either party objects within fifteen (15) days of the date of this award in writing, with a copy to opposing party. The claims of both Claimants are denied in their entirety.

Dated this 19<sup>th</sup> day of June, 2006,

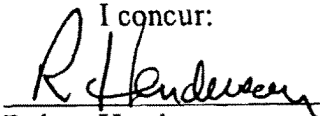
  
Stanley H. Michelstetter II,  
Referee


I dissent:

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Robert Henderson  
Carrier Representative

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Richard Draskovich  
Organization Representative

I concur:

  
Robert Henderson  
Carrier Representative

  
Richard Draskovich  
Organization Representative

Transcript  
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