

PUBLIC LAW BOARD 6942
Case No. 42

Parties to the Dispute:

Union Pacific Railroad Company
and
United Transportation Union

Statement of Claim: A claim was filed by Yardman C.J. Galvan, EID 0412265, for removal of a five day suspension from his personnel record, back pay and otherwise made whole.

Background: On August 31, 2005 at approximately 0225 hours, while employed as the foreman on train YCB31/30, the Claimant was switching cars on the west lead in the Council Bluffs Yard and failed to correctly align the drawbar on a flat car, causing the couplers to by-pass one another which resulted in a derailment. He notified the Manager of Yard Operations (MYO), the Tower and the south end crew to prevent further damage. The MYO preliminary inquiring revealed fresh scrape marks on the couplers in the east car and the derailed car indicated a cross drawbar impact which resulted in the derailment.

An investigation was held on September 26, 2005 and found sufficient evidence was brought forth to find the Claimant guilty of General Code 7.1 [Switching Safely and Efficiently]. The Claimant was assessed a Level 2 Discipline and five (5) day without pay. Charges were dismissed and no discipline was made against the following: Engineer P.E. Reyes, Switchman G.L. Davis Jr., and Switchman LoGrande.

Carriers Position: The procedural argument made by the Organization is false. The Complainant received his paperwork within the proscribed 10 day period. The 10 day period was missed in the case of Switchman Davis and Switchman LoGrande. All charges were dismissed against those two employees.

The Carrier proved that the derailment was caused because of the Complainant failing to properly align a draw bar. The Carrier knows of no cases where the draw bars had moved on its own. It was not until the investigation that any comments were made about the conditions of the track or the rail bed.

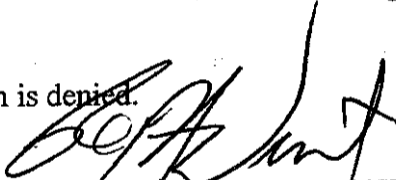
Organizations Position: In the instance case the investigation did not support the Carrier's allegations. The Claimant took every precaution to prevent crossed drawbars.


The primary cause was the track was soft from rain and the rail ties were broken. These conditions could not be blamed on the crew.

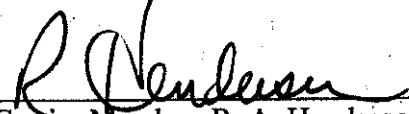
Findings: The Complainant received his paperwork in the proscribed time period there for there is no procedural violation. If the Carrier had disciplined Switchman Davis and LoGrande then there would have a procedural violation because they did not receive their paperwork in the 10 day period.

The Carrier proved that the Complaint was responsible for the derailment because he did not properly align a draw bar. The Chairman agrees that draw bars do not move on their own. He rejects the Complainant's argument that track was soft and the rail ties worn because that evidence was not raised until the investigation. If that had been the actual cause the Complainant would have made that argument to the first supervisor on the scene.

Award: The claim is denied.


Rex H. Wiant, Chairman and Neutral Member of the Board


Employee Member, R. M. Draskovich
Sr. Vice General Chairman


Carrier Member, R. A. Henderson
Assistant Director Labor Relations

Dated on May 30, 2006 in Kansas City, Missouri.