

SPECIAL BOARD OF ADJUSTMENT NO. 993

PARTIES
TO
DISPUTE:

UNITED TRANSPORTATION UNION (S&T)
(WESTERN LINES)

and

UNION PACIFIC RAILROAD COMPANY
(Formerly Southern Pacific Transportation Company)

Claimant: A. V. PETERSON
National Mediation Board Case No . 373
Award No. 373
National Mediation Board Code: 106

INTRODUCTION

This case is an appeal by an employee who is charged with having failed in the performance of his duties as a conductor by failing to assure that a shove of cars being set out on a siding was protected and did not impact or damage cars in the train on the adjacent track. As a result, the leading car in the showing movement and 3 cars in the train were damaged.

STATEMENT OF CLAIM

“We present on appeal, the request of Conductor A.V. Peterson (SSN

568-50-4318), Los Angeles Division, for replacement of wage loss and productivity credits resulting from his suspension from service for thirty days, January 6, 1997, through February 5, 1997; as well as wage loss and productivity credits resulting from his attending an investigation on December 5, 1996.

In addition, we request that this incident be expunged from Mr. Peterson's personal record. Mr. Peterson was charged with an alleged violation of Rules 1.6 and 6.5 of the General Code of Operating Rules and Rule 7.1 of Los Angeles Division General Order No. 3, effective July 1, 1996, which occurred on September 11, 1996.

STATEMENT OF FACTS

On September 23, 1996, the Claimant [along with other crew members] was sent the following notice of investigation:

"You are hereby notified to be present at the Office of the Terminal Superintendent 19100 Slover Avenue, Bloomington, California, at 9:00 AM, Tuesday, October 8, 1996, for formal investigation to develop the facts and place responsibility, if any, in connection with your alleged failure to provide protection to switching movement while setting out 44 cars to track 3140, Safeway Siding, in the vicinity of MP 499.90, Santa Ana Branch at approximately 10:15 p.m., September 11, 1996 which resulted in damage to leading car in shoving movement when shoved into side of your train and damage to 3 of the last 4 cars in your train upon departure while working as crew members on the 1WCANLK11.

For the above occurrence you are hereby charged with responsibility which may involve violation of Rule 1.6, Items 1

and 2 of the Safety and General Rules for All Employees, that portion reading:

Rule 1.6 Conduct

“Employees must not be:

1. Careless of the safety of themselves or others.”
2. Negligent

also Rule 6.5 of the General Code of Operating Rules, that portion reading:

Rule 6.5 Handling Cars Ahead of Engine

“When cars or engines are shoved and conditions require, a crew member must take an easily seen position on the leading car or engine, or be ahead of the movement, to provide protection. Cars or engines must not be shoved to block other tracks until it is safe to do so.”

and in addition, Rule 7.1 of the Los Angeles Division General Order No. 3, effective July 1, 1996, reading:

Rule 7.1 Switching Safely and Efficiently

“Following new paragraph is added:

Do not leave cars or engines standing where they will foul equipment on adjacent tracks or cause injury to employee riding on the side of a car or engine.”

You are entitled to representation and/or witnesses in accordance with your agreement provisions and any request for postponement and/or witnesses must be submitted in writing, including the reason therefore, to the undersigned.

It is your responsibility to be rested under the Hours of Service

Act in order to attend this formal investigation.

Thereafter, the formal investigation was postponed to November 5 and November 21, November 26 and December 5, 1996, on which date the formal investigation proceeded.

Subsequent to the investigation, the Carrier determined that the Claimant had violated as charged. He was suspended for 30 days.

ARGUMENTS OF THE PARTIES

CARRIER'S POSITION

The Carrier's witness, the Trainmaster who investigated the incident, and the Brakeman on the crew who had previously admitted to not protecting the shove, testified that when the 44 car setout had been done, it had been shoved blind with no one protecting it, and that the lead car in that setout had been pushed into the side of the Claimant's train, causing damaged both to the lead car in the setout and to 3 cars in the train.

As the Conductor responsible for the crew, the Claimant is held to have been responsible for supervising the setout to make sure that it was done properly. He failed to do so and was thereby careless and negligent and violated the rules as charged.

ORGANIZATIONS POSITION

The Organization argued that the violation was solely that of the Brakeman who was controlling the shoving movement and has already

admitted his responsibility in failing to provide protection to it. The Claimant had asked for and received assurances from the Brakeman who was very familiar with this location, that ample space was available for the 44 car setout. During this time the Claimant was handling the main switch and was unable to know that the movement was not being protected. The events occurred at approximately 10:15 p.m. when it was dark.

The Claimant has testified that he had discussed how the setout was to be made with the Brakeman prior to commencing work, and that he had specifically instructed the Brakeman to protect the move.

Accordingly, the Organization argues that the sole responsibility for these rule violations must fall on the Brakeman, and the Claimant should not have been disciplined for them.

FINDINGS

This Board, upon the whole record and all evidence, finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that it has jurisdiction of the Parties and the subject matter, and that the Parties were given due notice of the hearing held.

DECISION

A Conductor is responsible for the safety of his train and crew. While

he can delegate specific tasks to crew members whom he supervises, he will still be held responsible for their conduct. If, by properly supervising their work he could reasonably have prevented rule violations from occurring, then it is proper to hold the conductor also liable for those violations.

In this case, the Claimant was on a switch on the opposite side of the train, and could not personally verify that the Brakeman was protecting the shove. He claims to have instructed the Brakeman to protect the shove, and that he trusted the Brakeman to act properly. But this was the first time that the Claimant and the Brakeman had ever worked together, so there was no long history of trust built up which might have excused the Claimant from the necessity of verifying that the work had been properly done.

But the Brakeman's testimony at the formal investigation included a specific denial that the Claimant had, on the night of the incident, instructed him to ride the point of the cut of cars. (Transcript, Page 55, line 28 to Page 56, line 2.)

Most importantly, the record of the investigation provides ample basis for a finding that the Conductor either knew, or should have known that the shove had not been protected. With such knowledge, the Conductor should not have left without first verifying that it was safe to do so. The Claimant's own testimony is (transcript Page 45, beginning at line 27):

Q. So you were aware that when he made the cut that he did not protect the shove?

A. Yes

Q. Did you take any actions to determine if the cut of cars you folks had put into that siding had fouled the other end of the track?

A. No I didn't.

Q. Earlier in your testimony you said you were charged with the responsibility of getting that train safely across the road, is that correct?

A. That's correct.

Q. But you left the Safeway siding without the knowledge as to whether or not, or with the knowledge that, that shovels had not been protected and that there was a possibility those cars were out to foul at the other end of that track?

A. At the time I didn't think they were out to foul?

Q. Did you take any actions to assure yourself that they were not out to foul?

A. No I didn't.

On the basis of the foregoing discussion, the decision of the Carrier to find that the Claimant had committed the violations charged is appropriate. The length of the suspension is not disproportionate, considering the entirety of the facts of the case, and especially the fact that Claimant, knowing that there was a risk, chose not to verify that the setout had been completely safely.

AWARD

The Claim is DENIED

Martin Henner, Neutral Member

Submitted this 18th day of September, 1998, at Eugene, Oregon