



AWARD NO. 32
CASE NO. 79
ORT FILE: BU 4621-22

BEFORE THE
SPECIAL BOARD OF ADJUSTMENT NO. 226

THE ORDER OF RAILROAD TELEGRAPHERS)
)
 vs.)
)
 MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)
 MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS)

STATEMENT OF CLAIM:

1. That Telegrapher Leverman J. S. Ellis was improperly dismissed by the Carrier on October 29, 1958.
2. That Mr. Ellis shall be reinstated to service and paid for all time lost.

FINDINGS:

Claimant, a Katy employee, while working as towerman at the Missouri Pacific and Katy cross-over at Wagoner, Oklahoma, at 7:10 p.m. on October 11, 1958, is charged with responsibility for derailment of two cars in Missouri Pacific Extra 554A South as it was slowly moving from its position on the Missouri Pacific siding to the Missouri Pacific main line through the cross-over. The three power units comprising the engine, and the front trucks of the first car behind the engine, passed through the cross-over correctly. But the rear trucks of the first car and the front trucks of the second car continued on the siding, thus causing the derailment. Several succeeding cars were in process of taking the cross-over correctly also when the derailment occurred.

The testimony taken at the investigation supports the Carrier's theory that unlocked switch points were moved out of position by the weight and pressure of the cars passing through the cross-over causing the derailment.

Immediately after the two sets of trucks, on the two derailed cars in question, passed the alleged unlocked switch points, the switch points moved back into correct position to allow a few succeeding cars to enter the cross-over correctly before the emergency brought the train to a stop.

When the engineer, whose train was in a stopped position on the Missouri Pacific siding, called for the cross-over, Mr. Ellis, claimant, threw lever No. 41 which controlled the switch points leading to the main line. Lever No. 42 which would lock the switch points would not go over. Mr. Ellis and the head brakeman on the Missouri Pacific extra, who was in the tower picking up train orders, together tried to throw Lever No. 42, but it would not go over. Since No. 42 lever would not work, lever No. 43 controlling the proceed signal could not be lined up to the proceed position.

The Uniform Code of Operating Rules define "Interlocking" as

"An arrangement of signals and signal appliances so interconnected that their movement must succeed each other in proper sequence and for which interlocking rules are in effect."

The Uniform Code also provides that,

"Control operators and operators at interlockings must study and familiarize themselves with every detail of the requirements of Rules Nos. 375-(1) to 375-(17), inclusive."

Rule 375-(7) provides in part as follows:

"Operators at interlockings must not give hand signals when the proper indication can be displayed by the interlocking signals. Hand signals must not be given until the route has been examined, is known to be safe for the passage of train or engine....."

When Mr. Ellis, at the levers in the tower, found he could not lock the switch points with Lever No. 42 and thus enable him to line up the proceed signal with lever No. 43, he decided to go outside to the ground to pass the train through the cross-over by means of the correct hand signal. But he gave the hand signal without first examining the route and, therefore, without knowing the route to be safe for the passage of the train.

Rule N of the Uniform Code of Operating Rules provides in part that,

"Employees who are careless of the safety of themselves and others, negligent.....will not be retained in the service."

An investigation was held in Muskogee, Oklahoma, on October 24, 1958, to determine responsibility for the derailment. All proper parties, including Mr. Ellis, attended. The investigation was fairly conducted. There were no disputes between the witnesses, including Mr. Ellis, himself, as to the details of procedures followed by Mr. Ellis at the time of the derailment.

Mr. Ellis frankly admitted he did not inspect the route before giving the hand signal for the train to proceed through the cross-over. He said:

"I just felt like it was safe to go on over is the reason why I didn't inspect it."

Accordingly, the Carrier dismissed Mr. Ellis effective October 29, 1958. He now requests reinstatement to service and pay for all time lost.

This same Special Board No. 226 reinstated Mr. Ellis, effective July 7, 1958, for mishandling a train order at the Wagoner tower. On the following October 11, 1958, according to the findings of his superiors, he was negligent again,

as set forth in this proceeding. We should not set aside these findings of negligence unless clearly erroneous. Nor should we, under all of the circumstances of this dismissal, reinstate Mr. Ellis.

AWARD:

Claim denied.

/s/ Daniel C. Rogers
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Dissenting
W. I. Christopher, Employee Member
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/s/ A. F. Winkel
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June 6, 1960