

PUBLIC LAW BOARD NO. 7254

**PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim and appeal in behalf of Denver, CO Yardperson M. A. Hurich for immediate return to service, pay for all time lost, including investigation, and complete record clearance account dismissed for alleged violation of GCOR Rules 1.6, 1.13, 7.1 and 7.6 and Colorado Division General Notice No. 39, dated November 30, 2006, (alleged careless of the safety of yourself and other when you bottled the air on a cut of cars resulting in undesired release of train brakes and failure to switch safely and efficiently resulting in damage to track and equipment in excess of \$250,000) on May 23, 2007. (UTU File: DISP HURICH 6/18/07; Carrier File: 53-07-0435D)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant was hired by the Carrier on January 22, 2007 for train service. He completed a 15-week new-hire training program and four weeks of extended training for Remote Control Operations (RCO) on May 13, 2007. Claimant thereafter exercised his seniority to the position of Helper on Denver RCO Yard Job Y-DEN3182, on duty at 2259 hours.

During a May 22, 2007 tour of duty, Claimant and the assignment's Foreman placed 34 cars to Track No. 8 in Rennix Yard, Denver, and tied two hand brakes on the set out before cutting away from the cars. The cars as set out then rolled down the track and out the south end of Rennix Yard and into the Denver 31st Street Yard, where the cars collided with other rail cars and engines. Fortunately, there were no personal injuries, but the roll out did result in damage to equipment and property that the Carrier says was in excess of \$250,000.

Following a June 7, 2007 company investigative hearing into the incident, Claimant was notified by letter of June 18, 2007 that he was determined to have had a responsibility for the incident and was thereby dismissed from service for violation

of General Code of Operating Rules 1.6, 1.113, 7.1 and 7.6 and Colorado Division General Notice No. 39.

Rennix Yard has an approximate one per cent (1%) decent grade, with the north end of the yard being 27 feet above the south end of the yard. In this respect, Colorado Division General Notice No. 39 requires that hand brakes be tied on 25% of non-intermodal cars left unattended. In the instant case, this required eight to nine hand brakes be set on the 34 cars handled, whereas just two brakes were set or "bottled." As the Carrier submits, when the air on the cars is bottled, the brakes are not applied on cars and they are free to roll based on gravity.

In defense of Claimant, the Organization argues that the Carrier contributed to the incident by permitting an employee to operate an RCO unit who was nine days out of training and was performing his first paid trip working an RCO assignment. The Organization says that at other locations on the property employees cannot work in RCO service until they have completed 30 working trips in the terminal.

In this latter regard, the Board finds it noteworthy that it was testimony of Claimant that he was given control of the RCO unit to shove back the cut of 34 cars while his Foreman was in a jeep at the front of the move, watching and protecting the shove. Basically, Claimant said that while he was in the process of moving the cars he experienced a problem getting the cars to stop, and had to place the locomotive in full emergency, with the RCO system then immediately going into emergency. Claimant then said that when the RCO unit failed to recover control from the emergency, he got on the radio to the Foreman, who, in turn, told him to close the angle cock on the first car and then try again to recover control of the RCO unit. Claimant said he did as instructed, and that the RCO unit displayed a message stating, the brake recovery was in process. Claimant said he then asked the Foreman if he wanted him to pull ahead toward the lead to the north, which he had overshot because it had been hard to stop the move, and that the Foreman told him to just cut away, so he closed the angle cock, pulled the pin, cut away, and then noticed the cars to be rolling away. Claimant said he immediately got on the radio to tell the Foreman the cars were rolling, after which he sought to reverse the engine movement in an attempt to catch and recouple the cars.

The Organization also argues that the Carrier contributed to the root cause of the incident by permitting RCO operations to handle more than 20 cars on a one per cent grade. It says that had the Carrier adopted the Federal Railroad Administration recommendations from the March 2006 "Final Report on Safety of Remote Control Locomotive Operations," RCO operations would have been prohibited at the location of the incident that gave rise to the dispute.

There is no question that Claimant had a responsibility to perform his assigned duties in a safe and proper manner so as to have avoided a serious roll-out and

derailment that jeopardized his safety and the safety of other employees as well as resultant extensive damage to equipment, and that Claimant is therefore deserving of stern discipline.

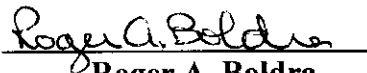
At the same time, it seems to the Board that Claimant, an employee one week out of a 19-week training program, even though he had passed the RCO qualification test, was not being properly supervised by his Foreman. Instead of sitting in a jeep at the front end of the 34-car move, the Foreman, in view of the Claimant performing his first paid trip working on an RCO assignment, should have had Claimant protect the movement while he (the Foreman) took control of the RCO unit. We say this because it is evident from testimony of the Claimant that he was not fully prepared for the rigors and responsibilities that attach to the field control and operation of the RCO unit. It also seems to the Board that as a newly hired employee, Claimant did not recognize a responsibility to have questioned his Foreman's instructions to cut away from the cars with hand brakes set on only two cars and the set out therefore not being in compliance with requirements that clearly prescribe hand brakes be tied on 25% of non-intermodal cars being left unattended.

In view of the particular circumstances of record, and without in any way condoning operational failures by newly hired employees shown to be fully qualified in both classroom and field training operation of an RCO unit, and properly supervised, the Board finds, and we will so direct, that discipline of a dismissal from service be modified to time out of service, with Claimant's seniority and other benefits restored, but without pay for time loss. In returning Claimant to service, the Carrier shall have the right to require that Claimant be placed back into training for such time as the Carrier determines appropriate for purposes of reorientation or field training as concerns RCO operations. It will also be the Board's finding that Claimant's probation under the Carrier's discipline policy shall run from the date of his reinstatement to service.

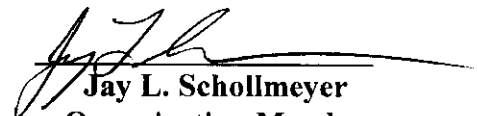
AWARD: Claim disposed of as set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Roger A. Boldra
Carrier Member



Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-09