

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 R. S. Pierce 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 PIERCE 6/18/07; Carrier File: 53-07-0436D)

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.

Appeal of discipline in this case arises out of the same incident as was before the Board in Case No. 2, except the Claimant here was the Foreman on Denver RCO Yard Job Y-DEN3182 on May 22, 2007 when, due to a failure to set out 34 cars in compliance with certain General Code of Operating Rules and, in particular, Colorado Division General Notice No. 39, the cars rolled down the track out of the south end of Rennix Yard, Denver, 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.

Study of the transcript of a joint investigative hearing involving Claimant and his Helper, which was conducted by the Carrier on June 7, 2007, reveals that 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.

It is evident in study of the record that Claimant had principal responsibility for the roll out or incident in a failure to properly supervise his Helper and in a disregard for operating and safety rules governing the set out of cars. Claimant had placed his Helper, an employee only one week out of training, and working his first paid trip on an RCO assignment, in charge of the RCO unit while he remained in a jeep at the front of the move, or in south end of Rennix Yard for purposes of protecting the shoving move.

There is no question that the Helper was experiencing difficulty with operation of the RCO unit, as more fully set forth in Award No. 2 in disposition of Case No. 2. Prior to cutting off from the cars, the Helper had difficulty stopping the move and had to place the movement into emergency and could not thereafter get the RCO unit controller to respond to further commands. Instead of leaving the jeep to take control of the RCO unit when the Claimant radioed him about the difficulties he was experiencing in operation and control of the RCO unit, Claimant instructed his Helper by radio to close the angle cock on the north car being handled, a circumstance known as "bottling the air," and to cut away from the cars. 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.

Notwithstanding the seriousness of the instant offense, which standing alone may properly be recognized as cause for a dismissal from service, at the time of the incident the subject of this dispute, Claimant was on probation for a previous Level "S" infraction. This placed Claimant on a three-year probationary period. Carrier's established Policy for Employee Performance Accountability provides, among other things, a dismissal from service for certain listed offenses where an employee is found guilty of two serious rule violations within 36 months. Accordingly, in the light of the seriousness of the instant offense, and in view of Claimant's past record, the Board finds no basis to conclude that discipline as administered by the Carrier was harsh or unreasonable. The claim will, therefore, be denied.


AWARD: Claim denied.



Robert E. Peterson
Chair & Neutral Member



Roger A. Boldra
Carrier Member


Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-09