

PUBLIC LAW BOARD NO. 7254

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

STATEMENT OF CLAIM:

Claim and appeal in behalf of Sioux City, IA Brakeman J. R. Ackerman for immediate return to service, pay for all time lost, including attending investigation, and complete record clearance, account dismissed on November 19, 2007, for alleged violation of GCOR Rules 6.5, 6.3, 6.23 and 1.6 (alleged failure to protect shove movement at Clara City, MN, when making a reverse movement which resulted in shoving through the North Main Line switch and enter the MT outside of authority. Then making a direction change causing the rear of train to derail and collision with train H KCKNTW1-27, resulting in a hazardous release which endangered the public causing a public evacuation) on October 29, 2007. (UTU File: DISP ACKERMAN 10/29/07; Carrier File: 53-08-0005)

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 present for and provided opportunity to participate in the Board's hearings on this case.

In an Interim Award issued following hearings on the dispute, the Board directed Claimant be reinstated to service with seniority and other benefits unimpaired, without pay for time lost, while we continued under study argument of the parties relative to other aspects of the dispute. The Board herein sets forth its rationale for that determination in issuance of its overall determination on the claim.

On October 29, 2007, Claimant was working as a Brakeman on a southbound road train out of Willmar, MN that was destined for Sioux City, IA. Operating instructions required that while en route the train take a siding at Clara City, MN so that a northbound train could proceed past such location in uninterrupted operation over the main line. The siding was said to be 7,569 feet, with Claimant's train of 65 cars said to be 3,953 feet in length.

Upon arrival at the Clara City siding at about 3:00 a.m., Claimant detrained the engine of his train to throw the north switch to the siding. The Engineer, with the

Conductor remaining in the cab of the engine, then pulled the train into the siding, stopping when the rear car was clear of the switch. Claimant restored the switch to normal for main line movement. Claimant then mounted the rear car of the train, and the Engineer pulled the train further into the siding. The Engineer thereafter stopped forward movement of the train and Claimant dismounted the rear car. The Engineer then placed the train in reverse, and backed it to the location where Claimant was standing in the siding so as to have Claimant board the engine. Unbeknownst to the crew at the time, the reverse move resulted in the rear car of the train being shoved through the north siding switch and out onto the main line and causing rear cars of the train to derail.

The Conductor of Claimant's train had meantime released a track warrant for the train's occupancy of the main line. This permitted the Train Dispatcher to issue a main track warrant to the crew of the opposing northbound train for its continued northward movement while Claimant's train occupied the Clara City siding.

The Engineer of the northbound train, upon approaching the Clara City siding from the south at about 49 mph, said he could see Claimant's train in the siding with its lights on, but as his train got closer to the south end of siding he could see that Claimant's train was still pulling down the siding. The Engineer said he then looked down the main line and saw the reflectorized tape on a tank car, and realized that cars from Claimant's train were fouling the main line. The Engineer said that he dumped the air on his train to place it in emergency, grabbed the radio to tell the crew of Claimant's train that they had cars all over the ground, and hollered for his Conductor to hit the floor as they rode out the collision.

The collision caused a number of cars to derail. One car in particular that was breached released hydrochloric acid into the air. This necessitated the evacuation of about 300 residents from the area. The Carrier says as a result of the collision and release of a hazardous material into the air it has sustained a monetary loss of over 1.7 million dollars in settlement of various claims; labor expenses for the clean-up; and, expenses related to equipment and track damage.

Notwithstanding it was the shoving of a car beyond the confines of the siding that caused the derailment and collision, the train's Engineer sought to defend his actions in a contention that he had been told at operating rules classes that a reverse move could be made within the confines of a siding without a crew member on the point to protect the reverse move. Actually, and contrary to such assertion, as brought out in testimony of Carrier witnesses and evidentiary documentation at the company hearing, Rule 6.5 of the General Code of Operating Rules in clear and unequivocal language proscribes: "Cars or engines must not be shoved until the engineer knows who is protecting the movement and how protection will be provided."


Turning to the matter of discipline assessed Claimant following a company investigative hearing. There is no question Claimant had a responsibility to have challenged the decision of the Engineer to make a reverse movement in the siding without proper protection as being in violation of applicable rules. However, the failure to do so must be judged against the background of what appears to have been the existence of several mitigating factors, albeit they do not excuse a failure to properly perform assigned duties pursuant to applicable operating and safety rules.


Claimant was a relatively new employee. He was one and one-half years out of training, with half of that period of time having been spent working in yards. Claimant had only two familiarization trips to Willmar, and this was his first round trip Willmar to Sioux City. Moreover, testimony establishes Claimant had several times in communication with the Engineer said that he was going to walk the length of the 65-car train up to the engine after he had dismounted the rear car. The Engineer insisted, however, that Claimant remain in position where he had dismounted the rear car and that he (the Engineer) would make a reverse train movement so that Claimant could then board the engine and thereby expedite further movement of the train when it was cleared to leave the siding. In this latter regard, it is noted that in making this reverse shove, the Engineer took the engine three or four car lengths past where Claimant was standing.


Further, Claimant's involvement in the incident seems to be that related to a mistaken belief that the Engineer, with thirty years of service, would not engage in reverse movement of the train to pick him up if the Engineer and the Conductor, who was in the cab of engine, knew that such a move was not permissible under applicable rules while in a siding.

It is only in the light of the aforementioned mitigating circumstances that the Board finds, as set forth in its Interim Award, discipline for Claimant be modified to time out of service with seniority and other benefits unimpaired, but without pay for time lost, or what is tantamount to a severe period of disciplinary layoff.

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