

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 Conductor E. J. Bland for immediate return to service, pay for all time lost, including 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 BLAND 10/29/07; Carrier File: 53-07-0006D)

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.

This case, the discharge of Claimant for alleged failure to properly perform his assigned duties, involves facts and circumstances that are the same as set forth by the Board in its consideration and resolution of Case No. 6 (Award No. 6), except that Claimant was the Conductor of the train, whereas the grievant in Case No. 6 was the Brakeman when their train became involved in a disastrous derailment on October 29, 2007. An overall recital of the incident that led to the charges and discipline would not, therefore, serve any useful purpose for the record. Suffice it to say that Claimant failed to perform assigned duties in compliance with applicable General Code of Operating Rules in that after taking a siding as instructed, an unprotected reverse shoving move resulted in rear cars of the train derailing when the rear car was shoved back over the switch to the siding and out onto the main line where it became subsequent cause for an opposing train on the main line to drastically collide with such car. The collision, derailment, and release of a hazardous material into the air necessitated the evacuation of about 300 residents

from the area and caused the Carrier to sustain a monetary loss of over 1.7 million dollars.

Claimant was seated in the cab of the engine when the Engineer, by radio, told the Brakeman, after the latter had reset the siding switch for main line movement and rode the rear car for a distance into the siding before dismounting, that he would back the train to the location where the Brakeman was standing so that the Brakeman could board the engine instead of the Brakeman walking from the rear of the train to the engine. Clearly, Claimant failed in a responsibility to have countermanded the Engineer's instructions to the Brakeman in the light of Rule 6.5 of the General Code of Operating Rules (GCOR) in clear and unequivocal language proscribing: "Cars or engines must not be shoved until the engineer knows who is protecting the movement and how protection will be provided."


Claimant also failed to perform his assigned duties in compliance with other GCOR rules, especially Rule 6.3, Main Track Authorization, in having released a track warrant for his train's occupancy of the main line after the rear car of his train first cleared the north switch into the siding, and subsequently permitting the reverse movement of the train that resulted in the rear car of his train being shoved over the north siding switch and out onto the main line without authority to again occupy the main line, albeit the shove onto the main line was made, as the Claimant said, "unintentionally."


In the light of the above considerations and overall study of the record, the Board finds the Carrier to have shown just cause for its decision to discharge Claimant from its service. The claim to set discipline aside and return Claimant to service 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