

PUBLIC LAW BOARD NO. 7254

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

STATEMENT OF CLAIM:

Claim and appeal in behalf of Willmar, MN Conductor J. C. Larsen for immediate return to service, pay for all time lost, including attending investigation, and complete record clearance of the entire incident, account dismissed from service on March 4, 2008, for alleged violation of ABTH Rule 102.1.2 (alleged failure to comply with ABTH Rules pertaining to bottling air on standing part of train at Breckenridge, MN at 2333 hours on January 28, 2008). UTU File: DISP LARSEN; Carrier File: 53-08-0008)

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 that 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 January 28, 2008, Claimant was the Conductor on Train H-GFDBRC9-28A when his train made a straight set out of cars at Breckenridge, MN, an intermediate point of his run.

In what the Carrier submits was a failure on the part of Claimant to be in compliance with ABTH Rule 102.1.2, Securing Train Before Detaching Locomotives, Claimant closed the angle cock on the cars left standing before making the cut, a practice referred to as "bottling the air" which the Carrier says used to be acceptable but is now prohibited by rule. In any event, the Carrier says that after so closing the angle cock on the cars, Claimant then walked back to the cars left standing and cracked open the angle cock on those cars, thereby allowing the air to

slowly leak off the remaining cars before proceeding to make his set out, leaving the cars unattended. In this respect, the Carrier says it took over 21 minutes for the air to completely bleed off the unattended cars and that such circumstance endangered Claimant's co-workers and the general public.

There is no question in study of the record that Claimant failed to fully comply with ABTH Rule 102.1.2. Claimant did not deny the method he utilized to make the set out and to secure his train. At the same time, it is offered that the train was left on veritable level ground, with five hand brakes set and a minimum of 20 pounds of air brakes set, with the angle cock on the train opened only slightly to allow the train line pressure to reduce to zero pounds.

Thus, the Organization says although Claimant and the Engineer did not explicitly follow the letter of the rule, there was no chance the train, as left, could move on its own, and that the train did not in fact move or endanger co-workers or the general public as contended by the Carrier.

Although the Carrier has shown just cause for the imposition of stern discipline, the Board finds the particular circumstances of record reason to conclude that the ultimate penalty of dismissal from service is harsh and excessive. It was for this reason, as set forth in our Interim Award, that we held discipline be modified to time out of service with seniority and other benefits unimpaired, but without pay for time lost.

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