

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24441
Docket No. 44139
95-1-94-1-S-6607

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Southern Pacific Transportation Company
(Eastern Lines)

STATEMENT OF CLAIM:

"Protest of the Brotherhood of Locomotive Engineers, General Committee of Adjustment, against the unwarranted and unjust action of the Carrier in dismissing Engineer W.G. Womack from service, February 18, 1992; Claim of Engineer W.G. Womack for all time lost commencing with suspension date February 6, 1992, until returned to service, including time spent in formal investigation February 11, 1992."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On February 6, 1992, Claimant was working as an Engineer on Dayton Road Switcher No. 2. On February 7, 1992, Claimant was instructed to attend a formal investigation on February 11, 1992, to determine his responsibility in connection with the derailment that occurred on February 6, 1992, involving Dayton Switcher No. 2. As a result of the investigation, Claimant was dismissed from service for violating Operating Rules 7(c) (paragraph 2), 103(G&M) (paragraph 1) and 520. The Rules read as follows:

"RULE 7(C): SIGNAL DISAPPEARANCE: When train or engine movements are to be made in response to radio communication, such as in switching operation, or picking up or setting out cars, specific instructions must be given for each movement. When backing or shoving train, engine or cars, specific instructions must be given for each movement. When backing or shoving train, engine or cars, the distance of the movement must be specified and movement must be stopped within one half the specified distance unless additional instructions are received. Thereafter, failure to maintain radio contact with the employee directing the movement by radio must be regarded as a stop signal."

"RULE 103 (G): SWITCHING SAFELY AND EFFICIENTLY: Employees performing switching must do so efficiently and in a manner which will avoid personal injury, damage to contents of cars, equipment, structures or other property."

RULE 103 (M): KICKING OR DROPPING: Kicking or dropping of cars will be permitted only when such movement can be made without damage to employees, equipment or contents of cars."

"RULE 520: IN LIEU OF HAND SIGNALS: When radio is being used in lieu of hand signals, both the direction and distance to be traveled must be given. Movement must be stopped in one half the distance specified unless additional instructions are received."

Claimant was reinstated by the Carrier on a leniency basis effective February 28, 1992.

The record is clear that the Claimant was operating the locomotive on February 6, 1992. While kicking cars there was a derailment causing substantial damage. Allegedly the radios failed at the precise time that the train crew was trying to tell the Claimant to stop. It is obvious Rules 103 (G&M) were violated, as the kicking of cars resulted in damage to equipment and lading. The transcript also reveals that Rule 520 was violated because the distance to be traveled was not given the engineer, and the movement was not stopped. Rule 7(c) requires that the movement be stopped if radio contact is not maintained.

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The Board finds the record substantiates that the Rules were violated resulting in a derailment, and the actions of the Carrier were not arbitrary or capricious.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 26th day of April 1995.

DISSENT OF THE LABOR MEMBERS

TO

AWARD NO. 24441, DOCKET NO. 44139 (CORRECTED)

"Kicking cars" is a switching movement which is routinely performed, with knowledge and approval of railroad operations authorities, every day, on virtually all the nation's railroads. Kicking entails shoving a string of railcars until an appropriate speed is reached, at which time a car or cars are uncoupled by ground crew personnel, the engine and remaining cars coupled to it are slowed or stopped, and the detached cars are permitted to roll to a desired track or location. Ground crew personnel often direct this switching movement via radio when they are out of view of the engineer or when they are positioned long distances from the engine. The claimant engineer was being so directed during the movement which ended in the derailment giving rise to the dispute now decided by Award No. 24441.

In this case, the ground crew radioed an instruction to "kick." Claimant began shoving. It was undisputed that Claimant did not receive the ground crew's stop signal because of stronger radio transmissions which blocked out the ground crew's signal. As the Claimant became concerned about the absence of further instruction and began stopping the movement, the subject derailment occurred. The Carrier blamed the claimant for the derailment, arguing he had violated Rule 520 in that he had begun the movement without being told how far the movement was to proceed. The Carrier believed that if a particular distance had been specified, once movement was underway, Claimant, hearing no further instructions, would have stopped in half the distance originally given, and the derailment would not have happened. In a hypertechnical sense, this theory may be correct. However, in actual practice (and railroads are operated practically more than in theory), Carrier's theory is wrong. This is so because ground crews, for various reasons, do not radio how far to move when kicking cars. The idea, when kicking, is to get to a certain speed, not to go a certain distance. It must be left to the discretion of the ground crew directing the movement to order a stop when the speed, location of the engine and cars and other related factors dictate a stop to the movement.

We believe that the Board erred in failing to acknowledge a condoned, standard operating practice, and by failing to understand what is intrinsic to that practice, i.e., the engineer's reliance upon his crew in the completion of this particular switching movement. Claimant's reliance upon his crew's signals in the performance of the switching movement in this case was quite negatively impacted by the failure of the radio at the critical time, but it was certainly not the Claimant's fault the transmission failed. It was incorrect to hold the Claimant responsible for the radio signal failure, which is what the Majority's decision accomplishes here. If the switching method, kicking cars, is itself the problem, the blame is principally the Carrier's for routinely permitting it in the first place. The Carrier has acted arbitrarily and unfairly when, after it condones a practice from which it benefits, it disciplines an employee because an accident occurred while he engaged in it. Rather than imposing discipline, the Carrier might better have protected its switching operations by moving its radio switching signals to a less cluttered frequency.

The Majority's decision in this case raises two consequential inferences; either the engineer is an insurer against all accidents, which is inappropriate and impossible, or a common and widely used operating practice must be modified to an extent which will, with near absolute certainty, frustrate efficient, timely switching in an increasingly time-sensitive transportation market environment.

It is public policy that industrial disputes be decided in arbitration in main part because arbitration boards typically possess the practical knowledge and technical expertise needed to make enlightened decisions about the matters brought before them. See United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960). Unfortunately, the Majority's findings in this case overlooked or misunderstood the nature of the involved switching movement, and therefore do not reflect the expected high enough level of application of practical knowledge and expertise to the circumstances of the subject derailment. For this reason, we impugn the decision, and we dissent.



R. K. Radek, Labor Member



G. R. DeBolt, Labor Member