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NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25217
Docket No. 44843
01-1-99-1-N-2255

The First Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood of Locomotive Engineers)
PARTIES TO DISPUTE: (
(Northern Illinois Regional Commuter Railroad Corporation
(METRA)

STATEMENT OF CLAIM:

"Claim of Metra/Electric Engineer J. A. Pais for the removal of Letter of Reprimand dated December 18, 1996 with all notations of discipline expunged from personal record and compensation for all time lost for the alleged violation of Metra/Electric General Code of Operating Rule Nos. 1.1, 1.1.1, 1.1.2, 1.6(1)(2), 1.47(B)(1), 622, 628, 7.1, 7.2, 7.3 and Metra Safety Rules E223 and Q1127 in connection with his alleged failure to properly perform duties as Engineer on Wednesday, October 30, 1996 at approximately 5:27 p.m. when he allegedly failed to take and/or use caution in preventing an injury on train, Track No. 2 at the Randolph Street Station."

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 October 30, 1996, the Claimant Engineer J. A. Pais was working as a Relay Engineer on assignment No. 309. His duty commenced that day at 11:00 A.M. and he performed duties that mainly consisted of moving passenger service equipment within the Carrier's yard at 18th Street and from the yard to the passenger station at Randolph Street. During the day's duties the Claimant operated four passenger cars onto the Number 2 Track at Randolph Street Station. At the same time, Engineer J. White was shoving two cars north onto Track No. 2 to make up Train No. 759. While Engineer White was coupling the cars together, he was unable to make a safety stop resulting in a hard coupling between the two cars. During the incident, the Claimant was walking southward through his cars when there was a jolt from the hard coupling. He grabbed the handhold on the seat, but continued to fall, hitting his shoulder on the seat and falling to the floor. The Claimant filed the Incidental Injury Report while he was hospitalized in the emergency room.

On November 4, 1996, Engineer White and the Claimant received a letter notifying them of a formal Investigation. The purpose of the Investigation was to develop the facts, determine the cause and assess responsibility, if any, in connection with their alleged failure to properly perform their duties as Engineers on October 30, 1996. The Carrier charged Engineer White with allegedly failing to properly control his train and make a safety stop that resulted in a collision of his train with a standing train on Track No. 2 in Randolph Street Station, injuring an employee and charged the Claimant with allegedly failing to take and/or use caution in preventing the injury resulting from the aforementioned collision. Upon the findings of the Investigation, the Claimant was found to have violated the General Code of Operating Rules and Metra Safety Rules. The Claimant received a letter of reprimand to be made a part of his permanent record. Engineer White accepted full responsibility and received a five day deferred suspension.

The Carrier contends that it has not violated the current Agreement and gave the Claimant a fair and impartial Hearing. The evidence supports the discipline in the Carrier's opinion. The Carrier asserts that the discipline is not harsh in light of his infraction and is based on their progressive discipline policy. Therefore, in the Carrier's opinion, the claim should be denied.

The Carrier asserts that the Claimant knew that after he stationed the first car, that the additional cars would be coupled and this could occur at any time. The Carrier contends that the Claimant knew that sharp and unexpected movements could occur

during a coupling and chose to take a shortcut through the back of the train rather than walk on the passenger platform. The Carrier feels that the proper question is whether or not the Claimant had any responsibilities for his injury.

The Carrier contends that the Claimant has a shared responsibility in his injury because he did not take proper care and plan his workday departure in a safe manner to avoid the injury. The Carrier asserts that it is clear that the Claimant chose the path to save time to catch his train home. He exposed himself, in the Carrier's opinion, to the risks inherent in being on board a train during a coupling operation. The Carrier further contends that the Claimant failed to take the prescribed precautions for walking through the train during a coupling operation and his testimony in this area is vague. In the Carrier's opinion, the disputed circumstances violate Carrier Rule 1.1.2 providing that "Employees must be careful to prevent injury to themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury."

The Carrier maintains that the Claimant failed to take the prescribed precautions to avoid injury and in accordance with that finding assessed discipline commensurate with the violation. In fact, the Carrier points out that the Claimant's record is now clear because it has been two years since the infraction. In the Carrier's opinion, the claim should be denied and the disciplined upheld because the Claimant's negligence was proven.

The Organization contends that the Claimant sustained an injury to his shoulder through no fault of his own on Wednesday, October 30, 1996. The Claimant, in the Organization's opinion, did nothing to cause the unmoving train to jolt and lose his footing. The Organization asserts that the Claimant did not violate Metra/Electric General Code of Operating Rule Numbers 1.1, 1.1.1, 1.1.2, 1.6(1)(2), 1.47(B)(1), 622, 628, 7.1, 7.2, 7.3 and Metra Safety Rules E223 and Q1127. The Organization finds it ridiculous that the Claimant was charged with the violation of 13 Rules and he was not even operating the train.

The Organization's first argument centers on the presence of other crew members on board the passenger coach at the time of the impact. Conductor Pochron, the Organization asserts, was in the rear of train 759 and was thrown forward when the coupling occurred, but he did not fall and was not injured. The Organization also points to the witness testimony of Conductor J. S. Fantin who states that the "coupling was a

little harder than normal and it could be difficult for someone walking on the train." The event recorder documented the speed of the train was 4mph at the time of the coupling, which is certainly hard enough, in the Organization's opinion, to knock a person down.

The Organization further contends that the Hearing Officer was prejudiced against the Claimant. They assert that the Claimant was singled out among the other crew members to receive discipline for the incident. The Organization contends that the Carrier contradicts itself in the discipline given to Engineer White. The Organization points out that the Carrier stated Engineer White was given five days of deferred suspension for failing "to properly control his train and make a safety stop that resulted in a collision of his train with a standing train on Track No. 2, injuring an employee." In the Organization's opinion, the Claimant cannot be held responsible for an injury caused by the rough coupling of another engineer. The Organization points to a number of arbitration Awards that address the disparity of responsibility and require crew members to be disciplined or exonerated in similar ways. Furthermore, the Organization contends that the Hearing Officer allowed hearsay testimony and did not call an actual witness depriving the Claimant of development of all the facts. The Organization feels that the Claimant has been improperly disciplined and that he should be exonerated of the discipline.

A careful review of the record before the Board, including the transcript of the Investigation, suggests that the instant claim must be sustained. Engineer White has accepted full responsibility for the situation and has been disciplined for the injury of an employee. The discipline of the Claimant for violation of Metra/Electric General Code of Operating Rule Numbers 1.1, 1.1.1, 1.1.2, 1.6(1)(2), 1.47(B)(1), 622, 628, 7.1, 7.2, 7.3 and Metra Safety Rules E223 and Q1127 is unwarranted since he was not the operator of the train. The Carrier admitted that the coupling occurred at a higher rate of speed than is recommended, which is a feasible explanation for someone losing his or her balance. The Claimant holds no responsibility for this accident and therefore the discipline is reversed. In light of the foregoing, the Board finds that the letter of reprimand should be removed with all notations of discipline expunged from the Claimant's personal record and that he be compensated for all time lost for his alleged violation.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 14th day of May, 2001.