

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25402

Docket No. 45829

03-1-02-1-M-2101

The First Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad
(Corporation (NIRC/Metra)

STATEMENT OF CLAIM:

"Claim of Metra/Electric Engineer Blas Manzanares for removal of sixteen (16) days suspension (15 days issued on November 2, 2001 and (1) day that had been issued on January 13, 2000 as deferred) to be served retroactive from Friday, October 12, 2001 and ending Saturday, October 27, 2001 for allegedly failing to properly perform his duties as Relay Engineer while operating Car No. 1642 in a switching operation at 18th Street M.U. Shop, which resulted in a collision at approximately 1:00 p.m. on Thursday, October 11, 2001."

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.

The Claimant began his employment with the Carrier in July 1998 and was promoted to the position of Locomotive Engineer in April 1999. On October 11, 2001, he was working as a Relay Engineer at the Carrier's 18th Street Yard in Chicago. At

approximately 1:00 P.M. that day he was operating passenger equipment that collided with other passenger equipment during a switching operation. The Claimant and two other employees involved in the operation were cited to attend an Investigation in connection with the collision. Following the October 26, 2001 Investigation, the Claimant was assessed a 15-day suspension and was informed that his suspension would run for 16 days to include a one-day suspension that had been assessed, but deferred, in connection with a previous incident. The other two employees were not disciplined.

There was conflicting testimony at the Investigation as to the work to be performed at the time of the incident. Although all three employees agree that the ultimate objective was to couple two cars and put them away on track eight, there is divergent testimony as to how that was to be accomplished. Both the Chief Hostler and the Pilot testified that the Claimant was to operate Car 1642, which was positioned with the control cab on the north end. He was to move Car 1642 and an attached car into a stub track, and then separate them. The next move, according to these two witnesses, was to take the south car (1525), which had the control cab at the south end, out of the lead track and then bring Car 1642 out of the stub track. In that way, the switching operation would couple Car 1642 to Car 1525 with the control cabs at opposite ends of the consist. This was the sequence of events directed by the Chief Hostler and agreed upon by the Pilot and the Claimant, these two witnesses stated.

The Claimant, on the other hand, testified that the sequence was to move several cars into the stub track, cut off Car 1642, and then immediately back that car out, move ahead into the lead track, couple Car 1642 with Car 1525 on that track and take the two cars over to track eight. That sequence of operations would have placed the control cabs in the middle of the consist.

All three witnesses agree that, as originally planned, the Chief Hostler was not going to participate in these moves.

The record shows that the Claimant moved north into the stub track and cut off Car 1642. Unbeknownst to the Claimant, however, the Chief Hostler and the Pilot brought Car 1525 out of the lead track, stopping at the stub track switch to unload some material. At that point, Car 1525 was blocking the route for Car 1642, and the switch was lined against the movement of Car 1642. Neither the Chief Hostler nor the Pilot communicated to the Claimant that they were moving Car 1525.

In the meantime, the Claimant made a blind move with Car 1642 in accordance with what he believed was the planned sequence of events. As he was moving, he heard the Pilot communicating on the radio. Not knowing that the Chief Hostler had decided to assist with the move, the Claimant testified that he understood the Pilot to be speaking to him and directing his movement when in fact the Pilot was directing the Chief Hostler's movement. The Claimant continued to shove Car 1642 and stopped only when he collided with Car 1525.

Based on the foregoing factual predicate, the Board finds that there is substantial evidence to support the Claimant's culpability in this matter. The conflicting testimony as to the sequence of moves communicated to the Claimant and the Pilot by the Chief Hostler was resolved by the Hearing Officer. We are not in a position to say as a reviewing body that the Hearing Officer's determination was arbitrary or against the weight of the evidence, particularly since the Claimant's version is contrary to what would normally and reasonably be expected in a move of this kind. Any misapprehension as to the sequence of moves or the intended order of the consist appears to be on the Claimant's part alone and not because there was error or confusion in the directive itself.

It is also clear that the Claimant made a serious error by making a blind move without knowing whether it was safe for him to proceed or whether the switch was lined for his move. By so doing, he violated the rules cited and discipline was warranted.

The Organization maintains that several procedural infirmities prevented the Claimant from receiving a fair and impartial Investigation. Based on our thorough examination of the record, however, we find no irregularities that can fairly be said to have violated the contract or to have had a material effect on the outcome of the Claimant's Investigation. Nor can we consider the evidence presented by the Organization for the first time before the Board in support of the Claimant's defense. There need be no citation for the well-established principle that the Board acts as an appellate body and is authorized to consider only such evidence exchanged on the property.

More persuasive, however, is the Organization's contention that fault in this matter should not rest on the Claimant's shoulders alone. Under Rule 7.4, Engineers are required to verify that cars or engines can be coupled or moved safely. They are also required under Rule 7.2, entitled "Communications Between Crews Switching," to ensure that there is a clear understanding of the movements to be made. In that

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regard, the Claimant was never told that the Chief Hostler was bringing Car 1525 off the lead track. Thus, while the Claimant negligently instituted a blind shove, he was not solely accountable for the lack of communication during this movement. As a result of this mitigating circumstance, the Board concludes that the Organization's claim of arbitrariness has merit. The discipline assessed shall be reduced to a ten-day suspension.

AWARD

Claim sustained in accordance with the Findings.

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 3rd day of February 2003.