

PUBLIC LAW BOARD NO. 5271

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY)	
(WESTERN REGION))	
)	NMB CASE NO. 1
VS)	AWARD NO. 1
)	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS)		

STATEMENT OF CLAIM:

Request expungement of 5-day suspension assessed to Engineer J. M. Chambers which resulted from a derailment on January 19, 1987, and pay for all time lost.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

Based on the entire record as presented, this Board is unable to determine that claimant was guilty of the charges brought against him.

Claimant was ordered in for investigation and hearing, "to develop the facts and determine your responsibility, if any, in connection with charges that at approximately 6:50 a.m., January 19, 1987, near MP 350.62, while you were working as engineer on helper units 3377, 3744, 3586, 3790, you failed to properly control slack in your train, using excessive power causing excessive buff force, resulting in derailment of UP 229650, indicating a violation of General Rules A and B and Rule 633 of the General Code of Operating Rules; Rule 1104(A-4), 1108(A-1A) and 1114(D-1) of Air Brake Rules and Train Handling Rules effective April 28, 1985, revised April 27, 1986, and System Air Brake Rules and Air Brake Instructions as outlined on Page 83 of System Timetable No. 4, effective 12:01 a.m., October 26, 1986."

Rule 1100(A 1A) reads in part as follows:

"Helper Service:

* * *

"1. When more than one locomotive is attached to a train, the Engineer of the leading locomotive shall operate the train brakes.

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"(A) All other engineers will operate their locomotive under the direction of the lead engineer. Communications between engineers must be maintained at all times."

Rule 1114(D-1) reads:

"Control of slack.

"1. Engineer is responsible for proper control of slack in train."

It is a matter of record that while a proper request was made to have G. D. Larkin, who was operating as lead engineer on the date in question, appear as a witness at the investigation, Carrier elected not to have him present. Consequently, those statements offered by claimant about his coordination with Engineer Larkin must be accepted as fact.

During the course of the investigation claimant testified that what he did "was all standard procedure and it is done every day, 12 or 14 or 20 times a day--and still is done." Also in the transcript we find the following question to Mr. Chambers and his answer:

"Q. Mr. Chambers, you stated that it is a practice of shoving on a train to enable it to get into the clear so that the helper can cut out, that this is common practice on the La Grande subdivision. Is that right?

"A. Yes it is for at least the two years that I've been in helper service it's been a common practice and that's what was taught to me. And I've had Road Foremen ride with me and have never objected, and in fact, Mr. Middleton has ridden with me on the helpers and it is common practice...in fact I've seen Mr. Middleton shove on a train."

(Note: Mr. Middleton was at the investigation in the role of co-interrogator and he made no objection to this statement.)

Inasmuch as the Board does not believe Carrier has proven the charges against claimant, it is the decision of this Board that the discipline assessed against him was improper.

Award No. 1

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AWARD

Claim sustained. Carrier is instructed to comply with this award within 30 days of the date hereof.



F. T. LYNCH, Arbitrator

Award date June 20, 1995