

209  
Award No. 503  
Case No. 503

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS        )  
  )  
  ) vs.        Parties to Dispute  
  )  
UNION PACIFIC RAILROAD COMPANY            )

STATEMENT OF CLAIM:

Claim in behalf of Engineer D. F. Freier, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation and that this incident be removed from Claimant's personal record when he was investigated on the following charge:

"Your responsibility for failure to comply with applicable rules of the Consolidated Code of Operating Rules resulting in derailment of CNW 132616 and BN 247638 in No. 488's train at Burlington Northern Westminster Street Manual Interlocking at approximately 7:25 p.m., Thursday, October 15, 1981 while you were crew members of No. 488's train."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Claimant Engineer was found responsible in connection with derailment of two (2) cars at a BN interlocking plant. The discipline assessed was ten (10) days suspension.

The essential facts are that Claimant was proceeding on a lunar signal approaching the plant when he observed that they were on the wrong track. He stopped the train and secured permission through the operator to back up a short distance to get pointed in the right direction. His crew then threw a power switch (with power off) and proceeded. After pulling the two (2) engines and eleven (11) cars over a split/<sup>track</sup>derail, two (2) cars were derailed.

The Board has studied the record in this case and we conclude that there is not sufficient evidence to conclude that Claimant had responsibility for the accident. First, the crew was authorized to throw the switch and move as they did. Second, the engines and eleven (11) cars passed over the derail before it gapped. There is no satisfactory explanation of what the crew did or did not do to cause this. In correspondence a Carrier officer alleged that:

"...the crew lined the switch off the BN onto the C&NW tracks and overlooked the derail device and the train was forced through until the derailment occurred."

A picture of the derail device shows that it was merely a split track. The move was to the trailing point and no forcing was possible. If it had been gapped at the start of the move, Claimant's engine would have derailed and not the twelfth (12) car.

In addition, the transcript contains a number of omissions.  
We cannot determine relevance of what was not recorded.

In view of the above, the discipline must be set aside.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within  
thirty (30) days from the date shown below.

B. L. Ivan Arthur  
Employee Member

R. J. Bengala  
Carrier Member

D. Deely  
Chairman and Neutral Member

Dated: Feb 20, 1958