

PUBLIC LAW BOARD NO. 6155

Case No. 4
Award No. 4
Carrier File No. 9300472
Organization File No. 02083C
NMB Code 106
Claimant: Engineer M. S. Hawkins

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

The Organization appeals the twenty (20) day suspension of Engineer M. S. Hawkins and requests the discipline assessed be expunged from the Employee's personal record, as well as, pay for all lost time with all seniority and vacation rights restored unimpaired.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds that the parties are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 29, 1998, that this Board has jurisdiction over the dispute involved herein.

By certified letter dated November 30, 1992, the Claimant was notified to appear for a formal Investigation to be held at the Conference Room at 402 So. Dawson Street, Seattle, Washington at 10:00 a.m., Tuesday, December 1, 1992. The purpose of the hearing was to determine whether the Claimant violated General Rules A, B, and D and Rules 101(C), 103(G), 104(A), 105 and 106 of the General Code of Operating Rules, effective October 29, 1989. The alleged violation occurred on November 26, 1992, at Tacoma, Washington, when the train on which the Claimant was the Engineer, sideswiped cars CRDX 8057 and BN 453668, derailing the latter and damaging Engine UP 9434. The hearing was postponed and held on December 3, 1992. The rules allegedly violated read as follows:

Rule A. Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous discharge of duty.

Rule B. Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.

Employees whose duties are affected by the timetable and/or special instructions must have a current copy immediately available for reference while on duty.

Employees must be familiar with and obey all rules and instructions and must attend required classes.

If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation.

Rules may be issued, canceled or modified by general order, timetable or special instructions.

Rule D. Employees must cooperate and assist in carrying out the rules and instructions, and must promptly report to the proper officer any violation of the rules or instructions, any conditions or practice which may imperil the safety of trains, passengers or employees, and any misconduct or negligence affecting the interest of the Company.

101(C) HANDLED SAFELY: Crew members must be aware of speed of train or engine, grade conditions and indication of air gauge to determine that train or engine is being handled safely and under control. If necessary they must take immediate action to bring the train or engine under control.

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.

104(A) POSITION OF SWITCHES: The position of switches or derails being used is the responsibility of the employee handling the switch or derail.

When practicable, crew members on engine must see that switches and derails near the engine are

properly lined.

Employees handling switches and derails must see they are properly lined for route to be used. It must be seen that the points fit properly and that indication of target or lamp, if so equipped, corresponds with position of switch. When operating lever is equipped with a latch, employees must not step on latch to release operating lever except when throwing switch. After locking a switch or derail, the lock must be tested to know it is secured.

105 MOVEMENT OTHER THAN MAIN TRACK: Except on track where a block system is in effect, trains or engines using other than main track must move prepared to stop within one half the range of vision short of train, engine, railroad car, stop signal, derail or switch not properly lined.

106 RESPONSIBILITY OF TRAINMEN AND ENGINEMEN: The Conductor and the Engineer are responsible for the safety and protection of their train and the observance of the rules, and under conditions not provided for by the rules must take every precaution for protection. .

The Carrier reviewed the evidence from the hearing and determined the Engineer was responsible for violating the cited rules. He was suspended for 20 days.

On the day of the incident, the Claimant was operating a Grain Train, the GLNETA-17, from Portland, Oregon to Tacoma, Washington. The train arrived at the Continental Grain Elevators at Approximately 12:15 a.m. The crew was instructed to pull the train into Track No. 2, but, the Conductor apparently missed the switch and it was actually lined for Track 4. The Claimant stopped for approximately four minutes and then proceeded at the Conductor's signal. Because the switch was not lined properly, he was headed into Track 4 instead of Track 2. The lead into Track 4 and, also Track 5, was fouled by a cut of cars. The Claimant who was operating within acceptable speed limits, did not see the cars until he realized he had hit something. It was then he brought his train to a complete stop.

CARRIER'S POSITION

The Carrier denies the Organization's contention that they committed procedural irregularities in this case. The Claimant, they contend, was afforded all rights to which he was entitled under the discipline rule.

As to the merits of the case, the Carrier argues that the Claimant was found responsible, albeit in a minor way, for the sideswiping of one car, the derailling of one car and the damage done to Unit UP 9434. The discipline was commensurate to his actions.

ORGANIZATION'S POSITION

The Organization argues that the Carrier was in gross violation of the notification rules by their failure to notify the Claimant of the initial hearing and charges. They also hold that the Carrier did not provide written notification, as required, of the subsequent postponement of the hearing. They assert that the Carrier's actions were a violation of the Agreement and the Claimant's due process.

As to the merits, the Organization holds that the Claimant did everything he should have done the night of the accident. They point out, that he was not in a position to judge either the switch alignment or the presence of the cars which fouled the lead track into Tracks 4 and 5. He was following the directions of the Conductor. He trusted her and had no reason to doubt her ability or her directions. They contend that the Claimant was going at an appropriate speed and in view of the length and weight of the train, he brought it to a stop as quickly as anyone could when he realized what had happened.

DECISION

The Board does not find that the Carrier committed any serious violations which would invalidate their actions in this case.

Testimony revealed that there was little if any chance that the Claimant could have seen the switch points from where he operated the engine. The Board does have a question as to why the Engineer did not see the cars fouling the track far enough in advance to stop. However, there was no evidence presented to demonstrate that he should have been able to see the cars in time. To the contrary, the testimony of the Carrier's officer, the Manager of Operating Practices, established that the Claimant handled his train exceptionally from the time he left Portland until he stopped the train after the impact. All indications were that the Engineer complied with all rules and he maintained an appropriate speed even once he was in the grain industry yard. The Manager of Operating Practices praised the Engineer for the manner in which he handled his train and gave every indication that the Engineer did not have a chance to see the cars in time to stop. This appears to be one instance where the Engineer could not have avoided the accident after he received directions from the Conductor to proceed with the movement.

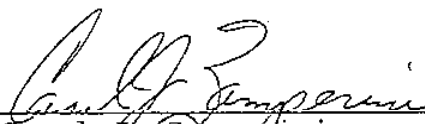
Even though it is generally true that Engineers and Conductors are equally responsible for the safe operation of their train, there are times, such as this, that the Engineer must trust and rely on the Conductor when he has to proceed with movement even though he is operating blind. It would be unfair to hold him responsible for something that simply is not his fault.

Furthermore, the Conductor had asked for help in entering this industry because she was unfamiliar with the area. However, the help did not arrive in time. While this doesn't exonerate the Conductor nor, the Engineer, it does leave open the possibility that if the assistance requested had been provided, the accident may not have occurred. Therefore it is a mitigating factor.

Based on all of the evidence, including the testimony of the Company Officer, the Board believes the claim should be sustained.

AWARD

The Claim is sustained. The Carrier is to comply with this Award within thirty (30) days of its receipt.



Carol J. Camperini
Chairman and Neutral Member

This 30th day of November, 1998.
Denver, Colorado