

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6423**

John C. Fletcher, Chairman & Neutral Member
Kendall F. Koff, Carrier Member
Dale L. McPherson, Employee Member

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
CPR-US/METRA/MRL**

and

I & M RAIL LINK, LLC

**Award No. 7
Case No. 7
Claimant L. D. Boyer**

*Date of Hearing-September 5, 2001
Date of Award-February 10, 2002*

Statement of the Issue

The Chairman and Neutral Member, after review of the entire record, has determined that the issue before this Board is:

Was Carrier justified in dismissing Claimant Switch Foreman L. D. Boyer in connection with a collision and derailment involving his assignment on October 30, 1999?

FINDINGS:

Public Law Board No. 6423, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein.

Claimant was regularly assigned as Switch Foreman of Job 931 at Carrier's Ottumwa Yard. On October 30, 1999, Claimant improperly lined a crossover switch on a reverse movement out of the Vulcan Chemical Plant, and caused Job 931 to collide with a

coal train on the main line. Three cars derailed, one of which contained hazardous material. Claimant was consequently removed from service and directed to attend a formal investigation in connection with the following charge:

[T]o ascertain the facts and determine your responsibility, if any, for the incident that occurred at approximately 2330 hours on October 30, 1999 wherein you allegedly while working the 931 local lined the crossover switch improperly and shoved a cut of cars into the side of a car on Train 262K29. This incident may have involved a violation of General Code of Operating Rules:

- Rule 1.1.2 – by your failure to be alert and attentive
- Rule 8.2 – by your failure to position the switch properly for your movement
- Rule 8.12 – by your failure to line the crossover switch properly

An evidentiary hearing into the matter was held on November 8, 1999, during which Claimant acknowledged having violated General Operating Rules 8.2 and 8.13 cited above. They state in pertinent part:

Rule 8.2 – The employee handling the switch or derail is responsible for the position of the switch or derail in use. The employee must not allow movement to foul an adjacent track until the hand operated switch or derail is properly lined. Employees handling switches and derails must make sure:

- The switches and derails are properly lined for the intended route.

Rule 8.12 The normal position of crossover switches is for other than crossover movement. The switches must be left lined in normal position except when they are in use for crossover movement.

The record establishes that Claimant properly lined the crossover switch affecting his movement into Vulcan Chemical Plant, but did not return the switch to its normal (other than crossover) position afterwards, as required by Rule 8.12. The facts show that while Job 931 was switching the plant, a coal train pulled up to same crossover switches on the main line, and lined both of them for the straight route as required by Rule 8.12. As Job 931 backed out of Vulcan Plant shoving 4 cars, Claimant relined the switch he had left in the crossover position for the straight route without realizing the crew of the coal train had already done so. As a result, Claimant mistakenly lined the switch back for crossover movement, and Job 931 shoved into the side of the coal train on the adjacent main line track derailing 3 cars, including one containing sulfuric acid. Claimant acknowledged that he did not inspect the position of the switch points before or after directing the engineer to shove over the crossovers, admitting that he was "in a hurry" and

just "threw the switch because [he] thought it was lined against [him]" (transcript of investigation at page 5).

Claimant was dismissed on November 24, 1999, and in due course, the instant claim for his reinstatement was presented. As the matter could not be resolved on the property, it was submitted to the Board for disposition.

The Organization argues that dismissal under the circumstances was unduly harsh, asserting that the dispatcher on duty hurried Claimant into completing his work at the Vulcan Plant so he could "dog-catch" a waiting train. The Organization also contends that the switch targets (designed to indicate the position of the switch points) were not positioned properly, and so misled Claimant into thinking the switch was lined against his movement out of the industry. The Organization therefore urges the Board to find Carrier's action excessive and unreasonable, and sustain the instant claim in its entirety.

Carrier argues that the charges were proven and the discipline assessed was warranted. Carrier points out that Claimant's violation of General Operating rules cited is manifest in light of the events, and asserts that dismissal was the appropriate remedy given the grave nature of its potential consequence to employees, property, and the public at large. Carrier urges the Board to find Claimant's negligence egregious enough to support the action of permanent dismissal.

After carefully reviewing the record and the arguments of the parties, the Board is convinced that Claimant was guilty of the infractions for which he was charged. However, the Board is persuaded that the penalty of permanent dismissal was, indeed excessive. While there is no doubt of Claimant's responsibility, and for this the Board agrees that discipline was warranted, the nature of the offense was not capital upon the whole of the record. The Board is particularly persuaded by the Organization's unchallenged assertion that the crossover switch targets under consideration here, historically displayed improper (opposite) indications. While Claimant admitted he was aware of this fact and should have taken it into consideration, the Board cannot completely ignore a potentially confusing condition permitted to exist by Carrier which could have, if not caused, certainly exacerbated the situation.

Accordingly, the discipline of dismissal is reduced to an actual suspension of time served, and Carrier is ordered to immediately reinstate Claimant to service without pay, but with all seniority rights unimpaired. Claimant's service record shall be adjusted to so reflect upon his successful completion of requisite physical and rules examinations.

AWARD

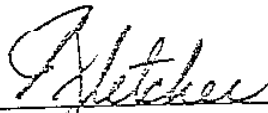
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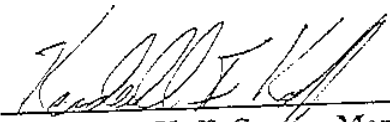
is answered in the negative, "No". Claim is sustained as set forth in the findings.

ORDER

Carrier is directed to comply with this Award within thirty (30) days of the date indicated below.



John C. Fletcher, Chairman and Neutral Member



Kendall F. Kuff, Carrier Member



Dale J. McPherson, Employee Member

Dated at Mount Prospect, Illinois, February 10, 2002