

**PUBLIC LAW BOARD NO. 4901**

AWARD NO. 80  
CASE NO. 80

PARTIES TO  
THE DISPUTE:

United Transportation Union

vs.

Burlington Northern Santa Fe Railway Company  
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: September 11, 2000

STATEMENT OF CLAIM:

"Request in behalf of Stockton Engine Foreman F. A. Sherman for the removal of the Level 4 Suspension for thirty (30) days to commence on October 16, 1994, and expire at 12:01 A.M. on November 16, 1994, including all violations of Rules from his personal record and that he be reinstated to the service of The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost including the thirty (30) days commencing on October 16, 1994, and expiring at 12:01 A.M. on November 16, 1994, as a result of the Investigation held on September 14, 1994."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

On August 23, 1994, Claimant's crew was instructed to pull 7 cars from track 117 and add them to the cars already in track 135. The turnover sheet Claimant was provided by the assistant train master showed only 10 cars in track 135. Based on Claimant's experience, track 135 would hold the 17 cars with no danger of exceeding the track's capacity. In reality, 18 additional cars had already been placed in track 135. The assistant train master from the previous workshift failed to note the correct car total on the turnover sheet and the assistant trainmaster on Claimant's workshift did not detect the erroneous car total on track 135.

Claimant assumed there would be no problem adding 7 more cars to the 10 he believed were already in the track. As a result, he did not have his switchman protect the point of the shove. Claimant intentionally chose to shove blind. In so doing, the cut of cars moved out of the opposite end of track 135 and collided with another train on the yard lead, which caused considerable damage.

Our review of the record reveals no procedural defects. We find no sufficient evidence of pre-judgment or that Claimant was denied a fair and impartial investigation.

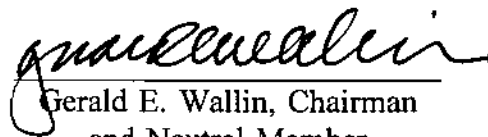
On the merits, we find the record to contain substantial evidence in support of Carrier's determination of Claimant's culpability. The record shows that a visual examination of the track would have disclosed the existence of more than 10 cars already placed in track 135. But Claimant did not look. Moreover, Claimant admitted that turnover sheets are not necessarily accurate. Nonetheless, Claimant did not check the accuracy. Claimant had also attended discussions presented by Assistant Superintendent Colbert that warned against shoving blind under any circumstances. In this case, track 135 curved to the extent that the point of the shove could not be observed. Nevertheless, Claimant directed a blind shove.


While it is true that the errors and omissions of the two assistant trainmasters contributed to the collision, Claimant was the final link in the safety chain. Had he not made an unwarranted assumption, had he verified the car count in track 135, or had he protected the shove, the mishap would have been averted.


In view of Claimant's prior disciplinary record, we find no proper basis for disturbing Carrier's decision.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
P. L. Patsouras,  
Organization Member

  
Gene L. Shire,  
Carrier Member