

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6798

**PARTIES** UNITED TRANSPORTATION UNION

**TO** and

**DISPUTE** THE BURLINGTON NORTHERN and SANTA FE RAILWAY CO.  
COAST LINES

AWARD NO. 4

CASE NO. 4

Organization File No. F-13-1561

Carrier File No. 61-03-0019D

**STATEMENT OF CLAIM:**

Request that the Level S Thirty (30) Day Record Suspension, one year probation be removed from conductor D. S. Mumford's record and that he recover any monies due for all time lost and Health and Welfare benefits not received.

**STATEMENT OF FACTS:**

On February 28, 2003, D. S. Mumford ("Claimant") with a seniority date of January, 1995, was working as a Conductor on the R-SWE0033-28 when he was observed by Trainmaster M. A. Collins ("Collins") going in between equipment without

first receiving the necessary “set and centered” protection from his Engineer, T. R. Duran. Collins approached Claimant who said he thought he “heard the Engineer say ‘set and centered,’ but did not definitively state that proper protection had been achieved.”

The Carrier argued that Collins had a clear and unobstructed view of Claimant and observed that he broke the plane of the cars with his entire body (except one of his legs). Claimant admitted that the plane of his hand “probably” broke the plane prior to the proper response being received. An investigation was conducted March 25, 2003.

As a result of the foregoing, Claimant was charged with failing to perform his duties in a safe and efficient manner. Specifically, Claimant is charged with violation of the General Code of Operating Rules (“GCOR”) 1.1. and 1.1.1. which state:

**Rule 1.1: Safety**

Safety is the most important element in performing duties. Obeying the rules is essential to Job safety and continued employment, and

**Rule 1.1.1: Maintaining a Safe Course**

In case of doubt or uncertainty, take the safe course.

In addition, Claimant was found in violation of Train Yard and Engine ("TY & E") Safety Supplement No. 1 Rule S 13.1.1 Going Between or Working on the End of Rail Equipment, which provides:

**Rule S-13.1.1: Going Between or Working on the End of Rail Equipment**

Going between or working on the end of rail equipment means an employee has placed all or part of his body where it could be struck by rail equipment if it were to move. Operating an uncoupling lever is not considered going between rail equipment.

Before crew members may go between or work on the end of rail equipment they must wait for movement to stop, slack to adjust, and ensure that all members of the crew have a clear understanding of the work to be performed. Unless another form of protection has been established, the following steps must be taken:

If a locomotive is not coupled to the rail equipment:

1. By radio or hand signal, notify all members of the crew who could affect movement in that track.
2. Crew members who could affect any movement of the equipment in that track must acknowledge that they understand a crew member will be going between or working on the end of rail equipment.

Prescribed hand signals to indicate "going between":

1. By day, give a stop signal. Raise arm farthest from the rail equipment straight above the head. Point the arm nearest the rail equipment at a 90-degree angle toward the rail equipment.

2. By night give a stop signal. With the arm extended forward parallel to the ground, move the light from left to right.

When stepping from between rail equipment, be alert for movement on adjacent tracks or vehicles moving on the walkway or roadway.

For the above listed violation, Claimant was assessed a Level S Thirty Day Record Suspension and a one year probationary period.

**FINDINGS:**

Based upon the record, the Board finds that the parties herein are the Carrier and the Employee Representative within the meaning of the Railway Labor Act, as amended. This Board is duly constituted by agreement of the parties and has jurisdiction over this dispute.

The Board finds that Claimant violated the Rules for which he was charged herein. Specifically, Claimant admitted at the investigation that he violated Safety Supplement No. 13.1.1. by going between or working on the end of rail equipment. Such misconduct means "an employee has placed all or a part of his body where it could be struck by rail equipment if the equipment were to move."

The Board finds that by going in between cars without receiving proper protection, a Level S-30 Day Record Suspension is appropriate based upon Claimant's

violation of GCOR 1.1 and 1.1.1 as well as Rule 13.1.1. In addition, see: PLB 5053, Award No. 15 (Neutral, Criswell), which provides:

Unsafe acts, even if an injury does not occur at the moment, form work habits that eventually lead to injury to the employee, fellow workers, perhaps even to the public, and property damage. Injury results in loss to both the Carrier and the employee. In the case of the employee, it is the physical pain and disability. To the Carrier it is the potential financial liability of an on-duty injury or, and at a minimum, loss of productivity from one of its employees. Therefore, the Carrier argues rigorous enforcement of well-intended safety rules helps to stem injuries and consequent losses.

The Board agrees with the foregoing Award and agrees with the Carrier's argument. Consequently, it is without cavil that vigorous enforcement of safety rules helps to reduce injuries, potential liability as well as loss of productivity.

See also: PEPA: General Guidelines for Serious Rule Violations which states that "going in between equipment [is] a serious rule violation subjecting a Claimant to a 30 Day Record Suspension." The Carrier argues that the foregoing guideline must be sustained and discipline must be assessed when the misconduct is a "Serious Rule Violation."

The Board concludes that Rules S-13.1.1 was violated when Claimant went between or worked on end of rail equipment and where an employee had his body where it could be struck by rail equipment if it were to move.

In response to Claimant's contention that the Engineer gave him "set and centered [when he] started to go in between to work the track", Claimant conceded That "his hand and lantern may have broken the plane of the car." When asked if his hand could have been hit, Claimant responded, "I don't believe I went any further than it would take to operate an uncoupling lever. . . ." The Board notes Collins testified that he had a clear and unobstructed view of Claimant who broke the plane of the cars with his entire body except for one leg.

Based upon the foregoing, the Board concludes that Claimant violated the Rule for which he was charged.

The Board reviewed the cases cited on behalf of the Organization in the instant mater and concludes that:

In Union Pacific Railroad Company and United Transportation Union, PLB No. 4897, Award No. 41 (Neutral, Lieberman), the Claimant was charged with "not riding in the proper position" and as a result, he suffered injuries when he was thrown into the cross bar on the end of the car. . . ." A majority of the Board concluded that Claimant acted properly because the tracks were notoriously close together "and there were protruding objects he was afraid of," on the side of cars which "he might be passing".

No similar situation existed in the matter now before this Board where, in fact, Claimant put himself in harms way when he “went in between equipment without first securing the necessary set and centered.”

The Board also reviewed United Transportation Union and Southern Pacific Transportation Co. (Eastern Lines), PLB No. 2946, Award No. 49 (Neutral, Van Wart) where the Claimant was charged with “failure to stop red automatic block” as well as “not conveying the aspect of the same signal.”

After reviewing the claims of all parties, the Board concluded that the Carrier unfairly resolved the issue of credibility against Claimant. . . .” Specifically, the Board ruled that “a careful reading of the transcript shows no basis in fact to support [the Carrier’s] determinations.”

In the instant matter, there can be no doubt that the “set and centered” criteria was not followed and there was no credible argument presented in opposition to the Carrier’s conclusion.

Finally, in United Transportation Union and Burlington Northern and Santa Fe Railway Company, PLB No. 3304, Award No. 479 (Neutral, O’Brien) and two members of the stelh audit team allegedly observed the Claimant “dismount moving equipment then walking back toward a switch.” Such conduct is prohibited by the Carrier. Specifically, “Employees are prohibited from getting off moving equipment

except in an emergency to avoid injury.” In addition, the Carrier’s multiple arguments concerning Claimant’s misconduct were repeatedly sustained with a single exception.

Nevertheless, the Claimant was reinstated to service based solely upon the fact that he was a thirty (30) year employee. However, the Board concluded that such reinstatement was contingent upon the approval of the Employee Assistance Program in order to determine that Claimant “will not pose a safety threat to himself or to his co-workers.”

The Board in the instant matter concludes that the circumstances in the foregoing case are readily distinguishable and as a result, the Board concludes that the submission of said case is totally without merit.

The Board also reviewed the cases cited on behalf of the Carrier in the instant matter and concluded that:

In *United Transportation Union vs. The Burlington Northern and Santa Fe Railway Company*, PLB No. 6759, Award No. 8, (Neutral, Hargrove) the Claimant was charged with failing to perform a required air brake test and inspection. The Carrier submits that the failure to conduct the test is undisputed. The remaining issue is the appropriateness of the discipline imposed. The Carrier submits, Claimant failed to test the air brake system to determine if there are any leaks to assure the crew that the locomotive has full braking capacity.



The Board concluded that a Thirty (30) Day Record Suspension is appropriate because the Claimant violated a series of Rules as well as federal mandates. Said suspension was deemed appropriate notwithstanding Claimant's injury free as well as discipline free record.

The Board also reviewed United Transportation Union and Norwalk and Western Railway Company, (supra) wherein Claimant was charged with continued engagement in unsafe work practices when he failed to arrange for positive protections with the Engineer for work to be performed in connection with switching movements.

Claimant was charged with going between the cars without arranging for positive protections with his Engineer. Specifically, Claimant failed to notify the Engineer that he was going between the cars and he neglected to wait for an acknowledgement from the Engineer.

Such misconduct had occurred on a number of prior occasions but the Board nevertheless concluded that the Claimant had learned a lesson and the period of time Claimant had been out of service was adequate. Therefore, Claimant was returned to service without pay for time lost. Unfortunately, this Board was not advised as to the time served which damages the precedential value of the findings.

Clearly, the cases cited by the Organization, raise no issue and supply no information to support the Organization's position. In the absence of favorable

precedent, the Board is compelled to conclude that none could be located. Therefore, the Board finds that the set and centered mandate was violated.


Said violation is particularly unacceptable because the violation could lead to a tragic accident. This Board reaches such conclusion regardless of the extent of Claimant's exposure to harm since the possibility of serious injury can not be ignored.

The Board concludes that the magnitude of the wrongdoing is not at issue since the Claimant's potential injury, whether to the whole body or exposure to a slight part thereof, cannot and should not be tolerated by the Carrier.

**AWARD:**

Based upon the foregoing, the claim is denied.

  
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JOAN ILIVICKY, Chairman and Neutral Member

  
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GENE L. SHIRE, Carrier Member

  
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W. E. YOUNG, Organization Member

Dated:   
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