

PUBLIC LAW BOARD NO 7026

**AWARD NO. 01
CASE NO. 01**

**PARTIES TO
THE DISPUTE**

**UNITED TRANSPORTATION UNION
(COAST LINES)**

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Sustained

DATE: May 25, 2007

STATEMENT OF CLAIM:

Claim of Southern California Yardman G. B. Edwards for removal of Letter of Reprimand dated May 4, 2004, from his personal record and pay for time lost while attending investigation.

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 the agreement of the parties, that the Board had jurisdiction over the dispute, and that the parties were given due notice of hearing.

On April 5, 2004, Mr. G.B. Edwards, hereinafter referred to as the Claimant was directed to attend a formal investigation as follows in pertinent part:

“You are hereby notified to attend formal investigation in the Hobart conference room, 2nd floor, 3770 E. Washington Blvd., Los Angeles, California, commencing at 11:00 a. m. on April 20, 2004. so as to determine the facts and place responsibility, if any, regarding report that on March 25, 2004, at approximately 0100 hours, while working, Y LACR731-24, at Watson Yard, you allegedly failed to secure cars on track 1215 causing the derailment of cars, MBLX 34737, TEIX 3612, SHPX 22153, and MBLX 34389, involving possible violation of Rule 1.1, Rule 7.1. and Rule 7.6 of the General Code of Operating Rules, Fourth Edition, effective April 2, 2000, as supplemented or amended.”

Mr. David Leathers, Superintendent of Operations testified that as the investigating officer

he went to Watson Yard to assist in rerailling the cars that had passed over the derail and to ascertain what had caused the mishap. He inspected the cars involved and found that none had hand brakes set on them. He interviewed Eddie Alvarez that evening when he reported for duty as his crew was reported to have been the first to use track 15 the previous night. Mr. Leathers quotes Mr. Alvarez as saying that he shoved track 15 and tied a hand brake on the east end, he later placed additional cars in track 15 using air, shoved to clear and placed an additional hand brake on the east end.

Mr. Paul Solomon Trainmaster testified that the other crew on duty (we assume Mr. Alvarez) last used track 15 at about 11:30 P.M. prior to the Claimants on duty time.

The Claimant employed as the helper on Remote Control assignment YLACR731-24 with Foreman C. T. Collins reported for work at 11:59 P.M.. They received their job briefing and in the course of their work they switched 5 cars of ballast from track 35 to track 15. In order to shove 15 to clear the Claimant walked to the west end of the cut bleeding the cars. When the air brakes were bled off he was able to shove in the clear and then set five hand brakes on the west end of the cut. He returned to the east end to make the cut behind the ballast cars. He was unable to do so without bunching the slack so that he could pull the pin.

OPINION OF THE BOARD:

The grade at Watson is downhill to the west, the Claimant states that he set five hand brakes on the west end of the cut and in order to pull the pin he had to move the locomotive in a westerly direction. This would in effect bunch the slack against the hand brakes set by the Claimant. Had hand brakes not been set, could the pin have been pulled, probably, but if pulled wouldn't the track have run out at that time, another good probability.

Mr. Salazar is quoted as saying he left 2 hand brakes set on track 15, the Claimant does not tell us that he released any hand brakes on 15 but that he set 5 on the west end. Mr. Leathers states there were no brakes set on the cars involved in the derailment.

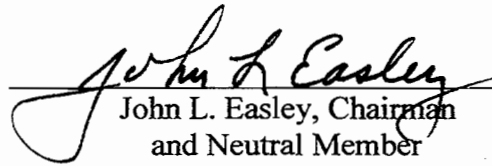
The Carrier has failed in their burden of proof, even under industrial standards the evidence presented at the hearing is insufficient to warrant discipline.

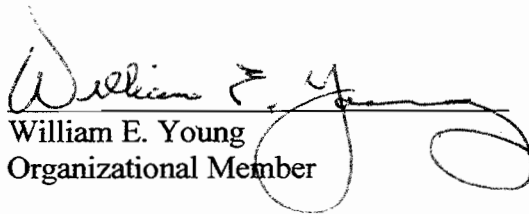
AWARD:

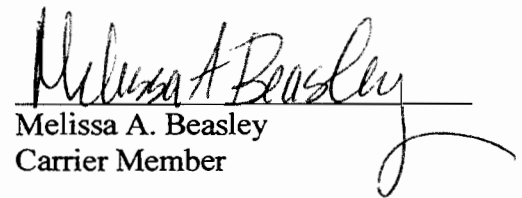
Claim Sustained.

EXECUTION ORDER:

The Carrier will comply with this award within thirty days of the above date.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organizational Member


Melissa A. Beasley
Carrier Member