

In the Matter of the Arbitration Between:

BNSF RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (COAST LINES)

NMB Case No. 106

Claim of D. J. Gonzales

Dismissal: Derailment
Resulting from Failure
To Align Switch and
Protect Point of Move

STATEMENT OF CLAIM: Request on behalf of Switchman D. J. Gonzales asking for reinstatement to service; payment for all time lost and restoration of seniority and all fringe benefits.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on August 19, 2010 in Washington, D.C. Claimant was present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement (the "Agreement") which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts including Claimant. The Board makes the following additional findings.

Claimant was hired by the Carrier in 1997 as a Trainman. On April 2, 2009, he was assigned as a Switchman and was working as the Yard Foreman at Hobart Yard in Los Angeles. Claimant was in charge of a move of eight loaded stack cars from Track 105, doubling them over to Track 107. In order to accomplish that move, the crew had to line a switch and shove the cars down Track 107. It was Claimant's job to line the switch and protect the point of the move. The evidence is that the engine pulled the cut out of Track 105, Claimant failed to line the switch, so when the engine shoved back, it routed the cut down Track 105 and pushed the cars over a derail and through a closed industry gate, causing a derailment. Claimant did not ride the point of the move and did not see that the cars were on the wrong track.

The Carrier denied the claim. The Organization appealed the denial up to the Carrier's highest designated official, but without resolution. The Organization then invoked arbitration, and the dispute was referred to this Board.

POSITIONS OF THE PARTIES: The Carrier argues that it met its burden to prove that Claimant violated the Rules with which he was charged and further established that the penalty of dismissal was justified.

The Carrier asserts that the evidence establishes that Claimant was in charge of the move and was responsible both to align the switch to direct the cut of cars from Track 105 to Track 107 and then to ride the point to protect the movement. It contends that the evidence clearly indicates that he neither failed to line the switch, which resulted in directing the shove back down Track 105, and failed to station himself on the point, rendering himself unable to observe the track in the direction of the move. BNSF contends that those failures constituted violations of the several listed rules and led directly to the derailment.

BNSF points out that the violations were Claimant's third PEPA Level S violations and occurred when he was still on probation, having been reinstated on a leniency basis. It points out, further, that PEPA allows dismissal for two serious rules violations within a 36 month period. The Carrier contends that Claimant is a danger in the railroad workplace and that he has exhausted his opportunities to correct his behavior.

The Carrier urges that the claim be denied.

The Organization argues that the Carrier never conducted an investigation to ascertain whether the derailment might have been caused by faulty equipment or some cause other than the crew. Having failed to look into those alternate causes, the Carrier should not have convened a disciplinary investigation of Claimant's responsibility.

Moreover, UTU protests, the record is devoid of evidence that Claimant was in charge of the move or that he failed to carry out his responsibilities in connection with the move. It contends that the person responsible for replacing the derail and closing the gate on a still-active track is the person at fault, not Claimant.

The Organization argues that the hearing officer failed to elicit such necessary evidence and thereby abrogated his responsibilities. It asserts that the Carrier failed to meet its burden of proof and urges that the claim be sustained, as written.

DISCUSSION AND ANALYSIS: The Board concludes that the Carrier established, by substantial credible evidence considered on the record as a whole, that Claimant violated the Rules cited by the Carrier. The record establishes that the turnout was not properly

lined to effectuate the shove onto Track 107 and that the point of the move was not protected. But for the fortuitous intervention of the Helper, the consequences of the misdirected and unprotected move could have been much worse.

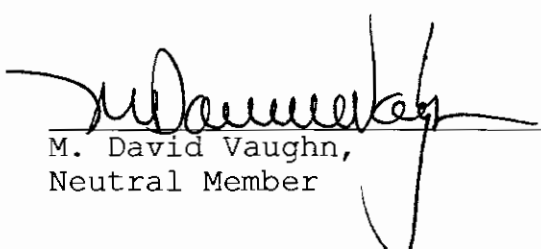
The evidence persuades the Board that, as Yard Foreman, Claimant was in charge of the move and was either required to line the switch and protect the point or to ensure that someone else on the crew did so. Both other members of the crew identified Claimant as being in charge of the move. He did not dispute his responsibilities with respect to lining the switch. Indeed, he testified that he thought he had done so. Clearly, that was not the case. It is also clear that Claimant did not ride the point or assign another crew member (i.e., the Helper) to do so.

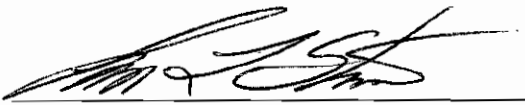
The actions which Claimant failed to take are basic to safe yard operation. The conjunction of the two preventable failures in the same move directly led to the derailment. As the employee responsible for the actions, Claimant is responsible for the derailment. The Board concludes he was properly subject to discipline.

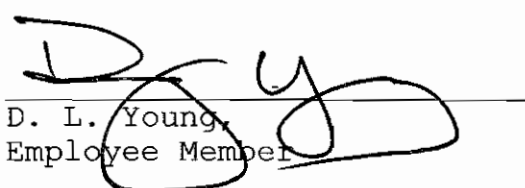
Claimant's disciplinary record includes two active Level S violations, for one of which he had previously been dismissed and then reinstated on a leniency basis. He remained on probation for those earlier violations at the time of the actions at issue. Based on Claimant's clear, multiple failures to carry out his basic responsibilities in the move at issue and his prior record, the Board concludes that dismissal was an appropriate remedy. The claim will be denied. The Award so reflects.

AWARD: The Claim is denied.

Dated this 4th day of November, 2010.


M. David Vaughn,
Neutral Member


Gene L. Shire,
Carrier Member


D. L. Young,
Employee Member