

PUBLIC LAW BOARD NO 7026

AWARD NO. 17
CASE NO. 17

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley
DECISION: Claim Sustained
DATE: July 7, 2008

STATEMENT OF CLAIM:

Claim of Southern California Brakeman T. D. Smith for removal of Level S, 10 day record suspension from his personal record and pay for any time lost caused by this incident.

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 the hearing.

Under date of April 21, 2006, brakeman T. D. Smith, hereinafter referred to as the Claimant, was instructed to attend a formal investigation as follows in pertinent part:

“You are hereby notified to attend formal investigation in the Terminal Superintendent’s Office, 1535 West Fourth Street, San Bernardino, California, commencing at 9:00 A.M. on May 02, 2006 concerning report that while working on job R-CAL3011-04, on duty 1600 hours on April 04, 2006, with locomotives BNSF 2530, BNSF 2557 and BNSF 2532, you allegedly derailed two rail cars, NRLX 400501 and GTW 378082, April 04, 2006 at approximately 2315 hours, on the lead track between Frito Lay and Sigma/Omega, due to misaligned couplers, at the same time causing the rail to roll over, and a gravity drop was made on the Frito Lay Lead, April 04, 2006, before 2315 hours at approximately Mile Post 40.3 on the Metrolink San Gabriel Subdivision, in Rancho Cucamonga, California.”

The investigation is called to determine the facts and place responsibility, if any, involving possible violation of Rules 1.1, 1.2.7, 1.3.1, 1.4, 1.6, 1.13, 1.47, 6.5 as amended by System Special Instructions for all Subdivisions No. 12, and 7.1, General Code of

Operating Rules, April 3, 2005 edition, TY&E Safety Rule S-13.2.4 (A) and General Notice No. 87, dated June 05, 2005 (Gravity Drops locations and Handling cars with air).

Subsequent to the hearing the Claimant received a letter of discipline assessment which reads in part:

This letter will confirm that as a result of the formal investigation on May 9, 2006 concerning the April 5, 2006 derailment of two rail cars on the lead track between Frito Lay and Sigma/Omega in Rancho Cucamonga, you are issued a 10-day Record Suspension for violation of Rules 1.1, 1.2.7, 1.4, and 1.47, General Code of Operating Rules, April 3, 2005 edition.

In assessing discipline, consideration was given to your personal record.


Based on the above quoted letter the Claimant was exonerated of any culpability concerning the gravity drop of cars at the G M facility. The remaining issue is the derailment of two cars on the Frito Lay lead track. The testimony of the Claimant was that the cars involved were on straight or slightly curved track. He attempted to make a joint between two cars equipped with long draw bars. He was able to make the joint twice but the pin failed to fall and on the third attempt the draw bars bypassed each other exerting a side pressure on the stationary car which in turn caused the one rail to roll on its side causing the derailment. When the incident happened it was quite dark 11:40 P. M. and raining hard. Inasmuch as the knuckles coupled on the first two attempts there was no reason for the Claimant to take a position between the cars to check alignment or for that matter even think that the draw bars would be miss aligned for the third attempt.

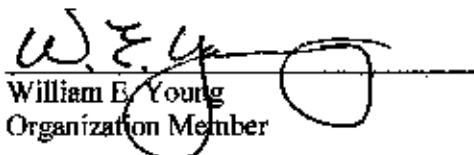
The Board finds that the Claimant was not responsible for the derailment and that the discipline will be set aside.

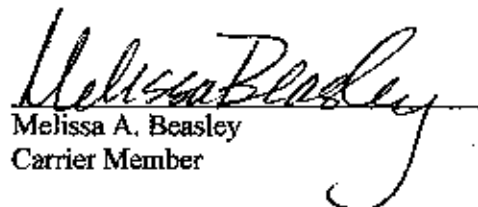
AWARD: Claim Sustained.

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
Organization Member


Melissa A. Beasley
Carrier Member