

**Award 19863**

**Docket 31235**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

**39 South La Salle Street, Chicago 3, Illinois**

**With Referee Arthur W. Sempliner**

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND  
ENGINEMEN**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

**STATEMENT OF CLAIM:** Claim of Hostler P. J. Doherty for payment for ten days suspended, effective April 29, 1951, and his record cleared.

**EMPLOYES' STATEMENT OF FACTS:** On April 13, 1951 a derailment occurred at Colonie roundhouse, locomotive 4017, for which Hostler Doherty was charged with responsibility.

**POSITION OF EMPLOYES:** It is our understanding that following the derailment on April 13, 1951 that Hostler Doherty was subjected to three different and separate interrogations. This is contrary to instructions issued in connection with the holding of hearings-investigations.

It is also apparent from the testimony that the Master Mechanic held Hostler Doherty responsible on the basis of fact that Doherty moved engine 4017 on to the table without a signal. It has always been the practice at Colonie to move engines when the table is lined and no instructions have ever been issued that hostlers must receive a signal from the turntable operator before proceeding.

The statement by the turntable operator that Hostler Doherty — who was standing at the oil rack — moved locomotive 4017 from the oil rack to the turntable while he (the operator) was moving the turntable the distance of one track \* \* \* cannot be supported by facts.

All data contained herein has been furnished the D. and H. Management.

**CARRIER'S STATEMENT OF FACTS:** Hostler P. J. Doherty moved locomotive 4017 from fueling station to the turntable without receiving proceed signal from turntable operator and without observing that the turntable was not in position to receive this engine, resulting in its going into the turntable pit.

**POSITION OF CARRIER:** The claimant has been in hostler service since December 1918. During all of this time it has been a part of his duties to move engines to and from the roundhouse to the fueling station and dispatch tracks over this same turntable. On this date locomotive 4001 had been moved from the roundhouse to one of the dispatch tracks just prior to the time locomotive

4017 approached the turntable. Hostler Doherty had seen this locomotive move over turntable while he was still fueling locomotive 4017. The turntable operator then lined the switches so that locomotive 4017 could come on the turntable.

After lining up the switches to the turntable, the operator walked across the turntable to circle it so that its cab would be at the opposite side of the pit. Turntable operators have been instructed that they must give hostlers a hand signal before a locomotive has authority to start across the turntable. The turntable operator did not signal Hostler Doherty that he could bring locomotive 4017 on to the turntable. This fact Mr. Doherty admits in answers to questions 9, 10, 11, 12, and 13 of his testimony which is attached, marked Exhibit "1".

After the locomotive had dropped into the pit, the Master Mechanic asked Mr. Doherty some questions in connection with the accident so that he would have some knowledge of what caused the accident. This conversation had no bearing on the formal investigation-hearing conducted April 23, 1951 at which time all persons involved in the movement of locomotive 4017, when it dropped into the turntable pit, were present. Carrier representatives made no reference to anything that developed during the above-mentioned conversation. The two employes, Hostler Doherty and Turntable Operator January Consoli, were permitted to, and did, question the testimony given by each other as to what actually caused the accident.

This testimony (Exhibit "1") will refute the statement in Position of Committee that " \* \* \* no instructions have ever been issued that hostlers must receive a signal from the turntable operator before proceeding." In answering questions 9, 10, and 11 of his testimony, Hostler Doherty admits he had received such instructions and had violated them. Mr. Doherty admits that after he started the locomotive away from the fueling point, instead of watching the track ahead, his attention was diverted to the locomotive bell (questions 30 and 31).

There can be no doubt that Hostler Doherty did not fulfill his duties according to the instructions. The experience acquired through the years should have made him conscious of the importance of the move his locomotive was making.

Carrier respectfully requests that claim be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Claim of Hostler P. J. Doherty for payment for ten days. Claimant had been suspended for moving a locomotive to a turntable without receiving a signal from the turntable operator. The locomotive fell into the turntable pit. The facts disclose that the claimant's locomotive was at the oil rack at a time the turntable was in use for another engine. The turntable operator then lined up the switches for the claimant's engine, walked across the turntable and mounted his cab, with the intention of reversing the turntable before it was

used by claimant. The claimant moved his engine toward the turntable as soon as the switches were cleared. He was approaching the turntable, which was in a position to receive his locomotive, when the turntable operator reached his cab, and caused the turntable to move.

The carrier found Hostler Doherty responsible for the derailment. To sustain this finding it is necessary that there be instructions that equipment is not to be placed on a turntable before the operator receives a proceed signal. The burden is on the carrier. The record is silent as to past practice. The record is silent as to written instructions. No witness was produced who could testify that he instructed claimant in the practice not to move on the turntable until he received a "proceed" signal. It is not conclusive that the turntable operator, an interested party in that he moved the turntable at the time the engine was approaching, had instructions to give signals, and that it was his practice to give such signals. It is the practice of the hostlers that is controlling. Likewise, the testimony of J. J. Brennan, Master Mechanic, who was the presiding officer at the hearing, does not nail down the necessary prerequisite to a finding of responsibility. Brennan testified:

"I have issued instructions myself that all roundhouse foremen are supposed to instruct turntable operators and hostlers as to the proper procedure around terminals."

There is a complete lack of any evidence as to the instructions to the accused.

Finally the testimony of claimant Doherty himself should be examined. Questions 9 and 10, asked by the carrier, and their answers are as follows:

Q. "Did you receive a signal from the turntable operator to go ahead?"

A. No sir, other than he lined up the switch and the table was lined up for that track.

Q. Aren't there instructions that you are not to move an engine on or off the turntable without a signal from the turntable operator?

A. Yes sir."

At a later point, in response to Question 23, claimant Doherty testified:

Q. "Mr. Doherty, you have been a hostler here for nearly 33 years. Have you ever been instructed by any one in authority, either in writing or otherwise, that it was absolutely necessary for you to receive a signal from the turntable operator to go on the turntable if the table and the switch were lined up for you to make the movement.

A. No sir."

It is apparent that the operation of the turntable at this yard was loose. The accident here could not have happened if the claimant had waited for a signal, nor could it have happened if the turntable operator had made proper observation before he turned the mechanism. There is no showing that the claimant acted contrary to the usual practice in the yard.

It is the further position of the claimant that there was a violation of Article 44 in that claimant was not given a fair and impartial hearing as

required. An examination of the transcript of the testimony of claimant Doherty, presided over by Master Mechanic J. J. Brennan, clearly indicates that the presiding officer had reached a conclusion as to claimant's responsibility prior to the hearing. At Question 32, Brennan is quoted: "Regardless of that, Doherty had no business starting for the table when it was not there." A study of the transcript could not justify this conclusion. At Question 36, Brennan again indicates that he has formed a conclusion, and is determined to pin the responsibility on the claimant. The record does not sustain Brennan's position. Again, at Question 38, Brennan indicates that he had reached a decision of guilt prior to the hearing, which, coupled with his role of presiding officer and chief prosecutor, destroyed the value of the hearing as fair and impartial.

**AWARD:** Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **FIRST DIVISION**

**ATTEST:** J. M. MacLeod  
Executive Secretary

Dated at Chicago, Illinois this 3rd day of March 1961.