

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24250
Docket No. 43848
93-1-92-1-U-1670

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Union Pacific Railroad Company (former
(Missouri Pacific Upper Lines)

STATEMENT OF CLAIM:

"Claim of Engineer C.L. Wilson that he be paid all lost time incurred as a result of a thirty (30) days actual suspension assessed against him on March 6, 1991, and that his record be cleared of any notation of this discipline."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On January 9, 1991, Claimant operated a grain train into Hope, Arkansas. After setting off the train on the south siding, the crew made a light engine move to yard their power on the 2-Pocket. After dropping off the Conductor at the depot, Claimant and the Brakeman continued the light engine move. At the wye to the Nashville main, the engine ran through the switch and then, due to a reverse movement, derailed one unit of the three unit consist.

There is no dispute that the consist ran through a switch not aligned for its movement and then, by another reverse movement, a unit derailed. The issue is whether the Engineer or the Brakeman was responsible for the derailment.

There is a substantial conflict in testimony between the Brakeman and the Engineer regarding the incident.

The Brakeman testified that he radioed the Engineer to stop short of the switch. Without giving the Engineer any further signal, the engines suddenly made a northward movement right by the Brakeman and through the switch. Next, the engines stopped without any signal from the Brakeman. The Brakeman further related that after he aligned another switch, he entered the engine and told the Engineer that they had run through the switch and he asked the Engineer if he wanted to examine the situation. After the Brakeman left the cab, the engines suddenly proceeded southward (that is, in a reverse movement over the run through switch) causing the derailment. The Brakeman stressed that he did not give the Engineer any radio or hand signals to effect either the northward or southward movements.

On the contrary, the Engineer concurred with the Brakeman that he received the Brakeman's radio signal to stop. However, a few moments later, after he thought the Brakeman had aligned the switch, the Engineer saw the Brakeman give a hand signal to proceed. Next, he got a stop signal. After the Brakeman aligned another switch, the Engineer saw the signal to proceed southward. The Engineer also attested he and the Brakeman did not converse in the cab until after the derailment.

At the Investigation, the Carrier's Manager of Operating Practices interpreted the tape removed from one of the engines of the consist. The Manager's interpretation of the tape seems to indicate that the engine ran through the switch before the engine came to a complete stop. More specifically, the Manager testified as follows:

"Q. Looking at your diagrams, Mr. Allen, can you determine the initial stop? Where was it in conjunction to Walnut Street? That is cutting it pretty close, but could you tell me?

A. It was in the vicinity of...I'm looking at the time on this thing in seconds, estimated in seconds. The first stop prior to making a reverse move was somewhere in the vicinity of the crossovers and the Nashville main switch, and I base that on the fact that the short time the tape run until the move was completely stopped and, just looking at the tape,

that is when your derailment occurred.
You couldn't go any further."

Thus, the Manager's testimony corroborates the Engineer's testimony because he speculated that the engines had already run through the switch prior to the first stop.

The Hearing Officer obviously credited the testimony of the Brakeman since the Carrier found Claimant guilty of being responsible for the derailment and it consequently suspended him from service for thirty days.

It is not the province of this Board to resolve conflicts in testimony or to pass judgment on the credibility of witnesses. The Carrier Hearing Officer is charged with the responsibility of evaluating witnesses' credibility. However, because the Carrier is still required to come forward with substantial evidence proving Claimant's guilt, the Hearing Officer can assess credibility so long as the testimony on which the Hearing Officer relies is reasonably plausible. In this case, the Brakeman's testimony is implausible and wholly unreliable for two reasons. First, the Manager of Train Practice was certain that the engines had already run through the switch before the Brakeman gave the last radio signal. Thus, there is insufficient evidence in the record to show that the Engineer was culpable for running through the switch. Claimant may have thereafter made a movement without receiving a signal from the Brakeman, but even if true, the Engineer would not have known that the switch had been run through. Second, the Brakeman's version was incredible. According to the Brakeman, Claimant allegedly moved the engine through the switch and stopped just as it was run through. From his vantage point, Claimant would have no way of knowing how far to move the engine to be clear for the southbound movement. Yet, according to the Brakeman, Claimant stopped at the appropriate place but the switch was misaligned. It is more plausible that the Brakeman conveyed the proceed and then halt signals without checking the switch alignment. Also, if the switch had been run through the Brakeman never explained why he did not promptly radio Claimant to apprise him of the problem. Instead, the Brakeman inexplicably went about his usual duties to align a switch for the reverse movement. Thus, the Brakeman's testimony was inherently inconsistent.

Inasmuch as the record does not contain substantial evidence of Claimant's guilt, we must sustain this claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 1st day of November 1993.