

**Award No. 2236**

**Docket No. 2206**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

**Referee Jacob Seidenberg**

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**PARTIES TO DISPUTE:**

**RAILROAD YARDMASTERS OF AMERICA**

**GRAND TRUNK WESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim and request of the Railroad Yardmasters of America that:

Fifteen (15) demerit marks be removed from the personal record of Yardmaster W. N. Roddy. Discipline assessed account alleged responsibility for accident at Middle Yard, Durand, Michigan on December 12, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** On December 13, 1965 the Claimant received written notice to appear at an investigation to determine responsibility for damage to 3 cars and to track at 6:45 A. M., December 12, 1965 caused by yard crew in Middle Yard, Durand, Michigan. Subsequent to this investigation held on December 17, 1965, the Claimant was assessed 15 demerit marks on his personal record for alleged responsibility in this accident.

**CARRIER'S STATEMENT OF FACTS:** Claimant W. N. Roddy was working the 11:30 P. M. to 7:30 A. M. Middle Yard Yardmaster's Assignment at Durand, Michigan, at the time of the following described incident.

At approximately 4:15 A. M. on the morning of December 12, 1966, freight train No. 411 was yarded on the No. 2 track in Middle Yard. Due to the length of this train, the last two cars, RTTX 902568 and RTTX 902845, were left setting foul of the No. 1 Middle Yard track on the west end of the No. 2 track. Some two hours and fifteen minutes later (6:30 A. M.), the yard crew assigned to the 11:45 P. M. to 7:45 A. M. Middle Yard Assignment, working under the jurisdiction of Yardmaster W. N. Roddy, doubled 11 cars from the main line to the east end of the No. 1 Middle Yard track. At the time this double over was made, the No. 1 track contained 34 cars and the addition of the 11 cars from the main line raised the total number of cars on No. 1 track to 45. The No. 1 track will accommodate approximately 47 to 50 average sized cars in the clear.

In accomplishing the double of the 11 cars from the main line to the No. 1 track, the yard crew found it necessary to tie onto the 34 cars already on the No. 1 track, and to shove into the clear. In shoving the No. 1 track, the most westerly car on the track, GTW 595425, struck cars RTTX 902568 and RTTX

902845, which were setting foul of the No. 1 track on the west end of the No. 2 track.

Following the above described accident, an investigation was scheduled to be held at Durand, Michigan, on December 17, 1966, to determine the responsibility of those concerned in connection with such accident. As the result of the evidence developed at the December 17, 1965 investigation, claimant Roddy's personal record was assessed 15 demerit marks. Also, the personal records of Yard Foreman R. D. Huey, and his Fieldman J. H. Walworth, were assessed 15 and 10 demerit marks, respectively, for their responsibility in connection with the December 12, 1965 incident.

A copy of the claimants' notice of investigation and a copy of the transcript of hearing taken at the investigation is attached hereto as Carrier's Exhibit No. 1.

Following the assessment of the 15 demerit marks against the personal record of Yardmaster W. N. Roddy for his responsibility in connection with the December 12, 1965 incident, the following appeal of discipline was received by the Superintendent from the General Chairman of the Yardmasters' Organization:

"RAILROAD YARDMASTERS OF AMERICA  
GTW Local Lodge No. 4

1251 Nottingham Road  
Grosse Pointe, Michigan 48230

January 15, 1966

Your File: 1020-34  
4465-R

Mr. E. T. Rose, Superintendent  
Grand Trunk Western Railroad  
7350 Orleans Street  
Detroit, Michigan 48211

Dear Sir:

I am appealing the 15 demerits assessed to Yardmaster W. N. Roddy at Durand, Michigan on December 12, 1965.

After reading the transcript of the investigation I cannot agree with you, Mr. Rose. In R. D. Huey's statements at the investigation, page 3 and I quote from Foreman Huey's statement:

Question: Where did you get your information on the number of cars in that track?

Answer: I looked at the car checker's list and counted them after the accident occurred.

Question by Keel: Did you instruct Fieldman Walworth to take up the room?

Answer: I told him it would hold the cars we had.

Question by Local Chairman J. M. Johnson, Railroad Yardmasters of America: Were you advised that No. 2 track was out foul of the West End?

Answer: Yes we both figured No. 2 track was gone, I knew it was out foul earlier in the night.

Rule 108 of Operating Rules was violated, also R. D. Huey did comply with Paragraph 9 in General Instructions of current time table.

In Wayne Roddy's testimony statement No. 2, Page 2, he told how Foreman Huey was informed the track was foul and if Foreman Huey had followed instructions this accident would not have occurred.

Mr. Rose, as you well know we cannot hold rule classes for switchmen on the lead of a yard.

Please review the transcript and remove the demerits assessed against Yardmaster Wayne Roddy.

Yours truly,

/s/ Anthony J. Woldanski  
Anthony J. Woldanski  
General Chairman  
Railroad Yardmasters  
of America"

The Superintendent declined the above quoted letter of appeal as follows:

"GRAND TRUNK WESTERN RAILROAD COMPANY

January 21, 1966  
File: AX 12-12-65

Mr. A. J. Woldanski, General Chairman  
Railroad Yardmasters of America  
1251 Nottingham Road  
Grosse Pointe, Michigan 48230

Dear Mr. Woldanski:

Replying to your letter of January 15, 1966, requesting removal of the fifteen (15) demerit marks from the record of Yardmaster W. M. Roddy of Durand, assessed as a result of accident that occurred about 6:30 A. M., October 12, 1965 in Middle Yard, Durand.

On reviewing transcript of the investigation held on Friday, December 17th, in connection with this accident, I find that the discipline in the case was justified so therefore your request is denied.

Yours very truly,

/s/ E. T. Rose  
Superintendent"

The Superintendent's decision was appealed to the Vice President and General Manager in the following letter:

**"RAILROAD YARDMASTERS OF AMERICA  
GTW Local Lodge No. 4**

1251 Nottingham  
Grosse Pointe, Michigan 48230

Your file: AX-12-12-65  
My file: WOL 168

January 27, 1966

Mr. H. A. Sanders  
Vice President and General Manager  
Grand Trunk Western Railroad  
131 W. Lafayette Blvd.  
Detroit, Michigan 48226

Dear Sir:

I am appealing the decision of E. T. Rose, Superintendent where he denied my request to remove 15 demerits assessed W. H. Roddy Yardmaster at Durand.

In my appeal to Mr. Rose I pointed out where Foreman Huey violated Rule 108 also paragraph 9 in General Instructions of current time table.

In my January 15, 1966 letter I asked Mr. Rose to review the transcript of investigation, when I received his letter of January 21, 1966 I found the month was in error.

Please remove demerits assessed to Mr. Roddy's record. Otherwise it is my desire to hold conference at the earliest practicable date and that you suggest date, time and place for conference.

Yours truly,

/s/ Anthony J. Woldanski  
General Chairman  
Railroad Yardmasters  
of America

cc: E. T. Rose, Superintendent

Please note your denial decision is rejected."

The Vice President and General Manager declined the above quoted letter of appeal and scheduled conference to further discuss same in letter reading:

**"GRAND TRUNK WESTERN RAILROAD COMPANY**

February 25, 1966  
Our File: 8390-2(145)  
Your File: WOL 168

Mr. A. J. Woldanski, General Chairman  
Railroad Yardmasters of America  
1251 Nottingham Road  
Grosse Pointe, Michigan 48230

Dear Sir:

This refers to your January 27, 1966 letter appealing request for the removal of 15 demerit marks assessed against the record of Durand Yardmaster W. H. Roddy as a result of investigation held December 17, 1965. The investigation was held to determine Yardmaster Roddy's responsibility for accident which occurred at Middle Yard, Durand, Michigan, at 6:30 A. M., December 12, 1965 while he was on duty there as yardmaster.

Facts developed at the investigation supported the charge that Yardmaster Roddy shared in the responsibility for the accident which resulted in damage to three cars and to the track. It is true that Foreman Huey was found guilty of violating Operating Rule 108 and also paragraph 9 of General Instructions of current Time Table. It is equally true that Yardmaster Roddy failed to instruct Foreman Huey to use proper caution before making the move into Track No. 1 which resulted in the accident.

In view of the foregoing, I am not agreeable to the removal of the 15 demerit marks assessed against Yardmaster Roddy's record and the instant request is accordingly declined.

You have requested a conference if the instant request was not allowed. Conference to discuss this case is scheduled for 10:00 A. M., March 18, 1966. Advise if time and date are satisfactory.

Yours very truly,

/s/ H. A. Sanders"

The conference scheduled in the above quoted letter was held at Detroit, Michigan, on March 18, 1966, during which Carrier reaffirmed its February 25, 1966 declination. The decision rendered by the Carrier at the March 18, 1966 conference was confirmed in writing to the claimants' representative as follows:

"GRAND TRUNK WESTERN RAILROAD COMPANY

March 23, 1966

Our File: 8390-2(145)

Your File: WOL 168

Mr. A. J. Woldanski, General Chairman  
Railroad Yardmasters of America  
1251 Nottingham  
Grosse Pointe, Michigan 48230

Dear Sir:

This confirms conference held with your Organization on March 18, 1966 at which the following claim was discussed:

Claim of Durand Yardmaster W. H. Roddy for the removal of 15 demerit marks assessed against his record as a result of investigation held December 17, 1965.

The claim was reviewed but request for the removal of the 15 demerit marks was declined. It was explained to you that the testimony taken at the investigation disclosed that Yardmaster Roddy failed to instruct Foreman Huey to use proper caution before making the move into Track No. 1 which resulted in the accident.

The declination set out in my February 25, 1966 letter was reaffirmed.

Yours very truly,

/s/ H. A. Sanders"

The General Chairman replied to the Vice President and General Manager's conference decision in the following letter:

**"RAILROAD YARDMASTERS OF AMERICA  
GTW Local Lodge No. 4**

1251 Nottingham Road  
Grosse Pointe, Michigan 48230

Your file 8390-2(145)  
My file: WOL 168

March 26, 1966

Mr. H. A. Sanders  
Vice President and General Manager  
Grand Trunk Western Railroad  
131 W. Lafayette Blvd.  
Detroit, Michigan 48226

Dear Sir:

This confirms conference held March 18, 1966 at Detroit, Michigan regarding W. N. Roddy of Durand, Michigan; where I asked you to remove 15 demerits from the record of W. N. Roddy.

In your previous letter of February 25, 1966 you admit that foreman Huey violates Operating Rule 108 also Paragraph 9 of General Instruction of the Current Time Table, however you did not state what rule W. N. Roddy violated.

At the conference I pointed out to you that we objected to the notice served on W. N. Roddy he was prejudged.

Article 6 (A) of the Yardmasters' Agreement reads as follows: 'No yardmaster will be disciplined or dismissed until the charges against him, which shall be specific and in writing, have been investigated.'

Since no specific charges were made Yardmaster W. N. Roddy did not know what to answer.

I am sending this claim to The Grand Lodge for further handling.

Yours truly,

/s/ Anthony J. Woldanski  
Anthony J. Woldanski  
General Chairman  
Railroad Yardmasters  
of America"

Under date of April 20, 1966, the General Chairman wrote to the Vice President and General Manager as follows:

"RAILROAD YARDMASTERS OF AMERICA  
GTW Local Lodge No. 4

1251 Nottingham Road  
Grosse Pointe, Michigan 48230  
April 20, 1966

Mr. H. A. Sanders  
Vice President and General Manager  
Grand Trunk Western Railroad  
131 W. Lafayette Blvd.  
Detroit, Michigan 48226

Dear Sir:

Again referring to discipline of 15 demerit marks assessed Yardmaster W. N. Roddy in connection with accident which occurred at Middle Yard, Durand, Michigan at 6:30 A. M., December 12, 1965:

I cannot agree with your letter dated March 23, 1966, wherein you state that the investigation disclosed that Yardmaster Roddy failed to instruct Foreman Huey to use proper caution. First of all, a study of the transcript will show that the Engine Foreman was properly alerted and aware of the entire situation; also there was no basis for a conclusion that the Yardmaster was in any way responsible. He is not a member of the crew, which has its Foreman in charge who is qualified to proceed in accordance with the Book of Operating Rules. To say that the Yardmaster is personally accountable for the individual misdeeds of crew members is fallacious.

Please reconsider and arrange to remove the demerit marks from the record of Yardmaster Roddy, and advise.

Yours truly,

/s/ Anthony J. Woldanski  
Anthony J. Woldanski  
General Chairman"

To which the Vice President and General Manager replied:

"GRAND TRUNK WESTERN RAILROAD COMPANY

May 3, 1966  
Our File: 8390-2(145)  
Your File: WOL 168

Mr. A. J. Woldanski, General Chairman  
Railroad Yardmasters of America  
1251 Nottingham Road  
Grosse Pointe, Michigan 48230

Dear Sir:

This refers to your April 20, 1966 letter referring to the assessment of 15 demerit marks against the record of Durand Yardmaster W. N. Roddy in connection with accident which occurred at Middle Yard, Durand, at 6:30 A. M., December 12, 1965.

I have reviewed this case in the light of your April 20th letter but I find nothing therein that would persuade me to change the decision set out in my February 25, 1966 letter of declination. Yardmaster Roddy must share in the responsibility for the accident because of his failure to give Foreman Huey timely instruction to use proper caution before making the move which resulted in the accident although he was in a position to do so.

The declination of this claim set out in my February 25, 1966 letter is reaffirmed.

Yours very truly,  
/s/ H. A. Sanders"

Copies of the Yardmasters' Working Agreement, effective March 1, 1952 and amendments thereto, in effect on this property on the date of the incident in question are on file with the Fourth Division.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim arises out of the question as to whether the Claimant Yardmaster was guilty of negligence on the morning of December 12, 1965 when a collision occurred as a result of a yard crew shoving 11 cars into the east end of No. 1 Track, which caused the most westerly car to strike two cars which were setting foul of No. 1 Tract at the west end of No. 2 Tract. The accident occurred at approximately 6:30 A. M., but approximately two hours earlier, at 4:15 A. M., Freight Train 411 in yarding its cars on No. 2 track, had left two cars fouling the No. 1 Track at the west end. The crew that shoved the cars into No. 1 Track worked under the direct supervision of Yard Foreman Huey, and the overall supervision of the Claimant Yardmaster.

At the time that the yard crew shoved the 11 cars onto No. 1 Track there were already 34 cars standing thereon. The capacity of No. 1 Track was



approximately 47 to 50 normally sized cars. The yard crew tied on to 34 cars and shoved them in order to double the 11 cars, and it was this shoving move that caused these cars to strike the two cars which were fouling the No. 1 Track at west end of No. 2 Track.

The Carrier assessed discipline against the Claimant as well as the Yard Foreman and his crew members for their activities in connection with the accident. The Carrier, while conceding that the Yard Foreman was negligent, contends that the Claimant was also negligent in that he did not properly caution the yard crew about the movement onto Track No. 1. The Carrier insists that the Claimant could have warned the yard crew to stop its movement onto No. 1 Track just clear of the east end, and that the Claimant was delinquent in not definitely ascertaining whether No. 2 Track was still foul of No. 1 Track at the time the Yard crew started shoving onto it. The Carrier also contends that the Claimant was negligent in not instructing the Yard Foreman to protect the west movement onto No. 1 Track.

The Organization denies that the Claimant had failed to act in a reasonable manner or was guilty of negligent conduct. It states that the record shows that he cautioned the Yard Foreman about the potential dangers and had specifically warned the Yard Foreman about the danger of trying to fill Track No. 1 which already had a considerable number of cars on it.

The Organization stresses that it is not the duty of the Yardmaster to confer and review in detail, with a yard crew, the moves the said crew should make in shoving a Yard Track. His responsibilities are of an over-all nature. In the instant case he instructed the Yard Crew to be careful and warned them that the adjacent track was fouling. The Organization states that the Yard Foreman was negligent in directing his crew to shove No. 1 Track "blind" because he mistakingly thought said Track would hold all the cars. It maintains that it was error to hold the Claimant responsible for the Yard Foreman's negligence or mistakes.

The Board finds that the Claimant informed the Yard Foreman generally about the fouling of No. 1 Track. The Yard Foreman stated that he knew about the fouling of the Track but assumed that Track No. 1 was clear by the time the yard crew shoved said Track. The Yard Foreman was also aware of the almost full capacity of this Track. The Board does not believe that there were any general over-all acts of supervision that the Claimant failed to take. The Board finds that the Carrier is in error in demanding that the Claimant Yardmaster exercise the same minute and detailed supervision that is exercised by a Yard Foreman, over a yard crew. The two jobs are not identical, and the nature of responsibilities demanded there is different. The Board does not suggest that a Yardmaster has less responsibility than a Yard Foreman, but it does suggest that the character of the responsibility exercised by a Yardmaster is different — it is more general and less specific. The Board does not find from its analysis of the record that the Claimant's acts, as a supervisor, were causally related to the accident in question.

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

The Carrier and the employe 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.

The parties to said dispute waived right of appearance at hearing thereon.

**AWARD**

Claim sustained.

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

**ATTEST: Muriel L. Humfreville  
Secretary**

Dated at Chicago, Illinois, this 25th day of October, 1967.