

PUBLIC LAW BOARD NO. 674

Parties: Brotherhood of Locomotive Engineers
and
Penn Central Transportation Company
(Northeastern Region)

Statement of Claim: "Removal of discipline assessed and payment for all time lost, including reasonable compensation for associated mental and physical duress, on behalf of Engineers Herman Hendrickson and Charles Spears, in connection with collision between Kingston Yard Job Engine No. 5304 and RV-2 Engine No. 5317, at approximately 10:15 AM on July 28, 1969, in the vicinity of Tenbroeck Avenue on Main Track, Kingston, New York."

Discussion: Claimant Hendrickson was the Engineer of Engine 5304 working the Kingston Yard job which reported for duty at 4:00 AM. Claimant Spears was the Engineer of Engine 5317, working Road Assignment RV-2, reporting at 9:00 AM.

On July 28, 1969, the two Claimants in the course of operating their respective assignments collided at approximately 10:15 AM in the vicinity of Tenbroeck Avenue on the Main Track. Both Claimants and crews contended that they received permission from the Dispatcher to occupy the railroad when they did.

Claimant Hendrickson stated that his Conductor, Mr. J. L. Schatzel, informed him at about 9:40 AM that he had received permission from the Dispatcher to occupy the Main Track for an hour and 15 minutes. This Yard Assignment moved east for about three-quarters of a mile to the scale track to weigh their ten cars. After these cars were weighed, the Yard assignment reentered the Main Track and was proceeding westward when it collided with Road Train RV-2.

Claimant Spears testified that Head Brakeman Click informed him that Conductor Larkin had told him that it was all right to proceed with the trip as soon as he could get the switch open leading to the main but to watch out for the yard engine working in the south yard, which apparently was a term synonymous with the Scale Yard. Claimant Spears and Crew had to wait approximately eight minutes before the switch leading to the Main Track became unlocked and could be thrown so that the Road Crew could enter the Main Track. After they had entered the Main Track they proceeded under restricted speed to a point where the Track curves to the right.

Claimant Hendrickson was operating his engine from the left side as he was proceeding westwardly and he put his engine into emergency stop as soon as his Conductor, Mr. Schatzel, hollered that there was a headlight on the track. Claimant Spears testified that he saw an engine five or six car lengths away as he entered the curve. He also made an emergency application of the brakes and the collision took place within a few seconds.

The Train Dispatcher on duty, Mr. Nolan, and the learner that day, under the jurisdiction and supervision of Mr. Nolan, Mr. Skotek, denied giving the Claimant Engineers proper clearance to enter the Main Track. Mr. Skotek stated, with permission of Mr. Nolan, that at about between 9:00 AM and 9:15 AM, he authorized the Yard Engine to proceed down the Main Track to the Scale Yard to weigh cars and were given an hour and 15 minutes to occupy the Main Track.

Mr. Skotek also testified that the Road Engine

crew was given permission to take the engine out of the engine house and to go down the yard on the passing siding, and he asked the Crew to let him know when they were ready to leave the Yard, but the Crew never did request permission to occupy the Main Track.

After the collision, Conductor Larkin, at about 10:25 AM, called Trainmaster Rogers on a city telephone to report the accident. The Trainmaster went to the scene and promptly took Brakemen Click and Tomaseski to the hospital as they appeared to be injured. He also asked Conductor Larkin to accompany him as he was not certain just where the emergency entrance of the hospital was. The Trainmaster, however, before he left the scene of the accident, told the yard engine [sic] to shove the engine of RV-2 into the North Yard and to clear the Track of the cars of the Yard Assignment.

The Carrier took, among others, the Claimants out of service on the day of the accident. After a duly noticed Investigation held on August 1, 1969, the Carrier notified the Claimants that they had been found guilty of violating Operating Rules 502, 102A and 400 N-3 (seventh paragraph) and were being suspended for 30 days.

The Rules in issue state in part:

"Rule No. 502 -

A Train or engine must not enter a block at a hand-operated switch or crossover nor foul the main track without permission of the Train Dispatcher or operator.

Where Rule 201 applies and such switch or crossover is not equipped with an electric lock; a train order must be issued authorizing

the movement if the normal speed is over 20 MPH."

"Rule No. 120 A

When a train is stopped or delayed from any cause including "Stop" (Rule 292), the conductor, engineman, or member of their Crew, when authorized by the conductor or engineman, must, as soon as the safety of their train will permit, ascertain the cause and, when practicable, communicate with the Train Dispatcher or operator."

"Rule No. 400 N-3 (seventh paragraph) - Enginemen - They are responsible for the observance of all signals controlling movements accordingly and the regularity of speed between stations, exercise discretion, care and vigilance in moving the engine with or without cars to prevent injury to persons, damage to property, and lading, avoiding collisions and derailments. . . ."

Carrier's Position

The Carrier maintains that the Claimants were properly disciplined because they breached the requisite operating rules. It states that with regard to Claimant Spears, the Investigation record reveals that he entered the Main Track without having ascertained whether permission had been obtained from the Train Dispatcher to do so. Mr. Nolan and Mr. Skotek clearly stated that they had not received any request from the crew of Train RV-2 for permission to leave the Yard and enter on the Main Track. Mr. Skotek stated he had some conversations with the crew of RV-2 pertaining to their reporting out of the engine house and reporting their train consist, but no permission was asked or granted to go out on the Main Track.

With regard to Claimant Hendrickson, the Carrier

states the Yard Crew did receive permission to go out on the Main to weigh 10 cars but that was the last conversation held with them. The Yard Crew never requested permission to re-enter the Main Track after they finished weighing the cars and had no further conversation with the Dispatcher after receiving the initial instruction.

The Carrier further states that the Claimants violated Rule 102A because neither one of them notified the Dispatcher about the collision and he learned about it from other Company officials at approximately 10:55 AM.

The Carrier concludes that in no event are the Claimants entitled to be compensated for "associated mental or physical duress" since there is no contractual provision for such elements of damage, and the Board would be exceeding its authority if it were to grant such an item of damages.

Organization's Position

The Organization states that the discipline must be vacated because of material procedural and substantive defects.

With regard to the procedural errors, the Organization contends that the charge preferred against the Claimants was too general, lacking in depth, and consequently a charge against which it was not possible to prepare an adequate defense. The second defect was the introduction by the Carrier of the Claimants' service records into the record of the Investigation. The record of the Trial is for the purpose of enabling Carrier officials to administer disci-

pline related to the incident in question. It must be noted that the Carrier did not introduce into the record of the proceedings, even over the protest of Local Chairman Schimmel (UTU), the service records of the two Dispatchers. It is possible that the service records of these two employees might have reflected previously improper and unsafe service performances.

The Organization also contends that the Carrier assessed discipline without reviewing the voluminous record (458 pages) of the Investigation. Superintendent P. A. DiGangi wrote the Claimants a letter dated August 13, 1969, that they were being administered a 30-day suspension. However, the Court Reporter wrote the Organization that he had delivered the Transcript of the Proceeding to the Carrier on August 19, 1971. It is obvious that Superintendent Di Gangi assessed the discipline without reading or knowledge of the Transcript of the proceedings. In the appeal proceedings Superintendent Di Gangi wrote on October 1, 1969, that he had again reviewed the Transcript, although it is obvious that he had not reviewed it in the first place.

Concerning the substantive aspects of this case, the Organization states that there was no valid basis for assessing discipline against the Claimants. The Transcript indicates that Claimant Spears did receive permission to enter the Main Track. This permission was relayed to him from Conductor via Brakeman Click. The Claimant had no reasonable basis for questioning the instructions relayed to him. If the order relayed from the conductor lacks diligence or prudence, it was not the fault of Engineer Spears.

The Organization further states that there must be no doubt that Claimant Hendrickson had received permission from the Dispatcher to occupy the Main Track for one hour and 15 minutes and was properly on the Main Track within his allotted time.

The Organization also states that the evidence of record reveals that both Claimants did everything they could to avoid the accident. Both of them were operating under restricted speed and furthermore Claimant Hendrickson had not been advised by the Dispatcher that Train RV-2 was using the Main Track during the time allotted to his engine.

The Organization denies that the Claimants violated Operating Rule 102A because the record clearly reveals that they were aware that Trainmaster Rogers was promptly apprised of the accident and that he would inform the Dispatcher of the collision. Moreover, there were no readily available means of communication on the property for the Claimants to utilize.

The Organization states that the Carrier has attempted to insulate itself from its shortcomings by shifting the blame of the collision to the train and engine crews of the two trains involved.

Findings: The Board, upon the whole record and all the evidence, finds that the employees and Carrier are Employees and Carrier within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that the Carrier committed material and substantial error when it issued and assessed its disciplinary sanctions prior to receiving the Transcript of the Investigation. The record of this case was quite extensive. The Carrier apparently regarded the Investigation as being of sufficient gravity that it employed an Official Reporter of the Supreme Court of New York State to record the proceedings. The record of the case was in excess of 450 pages. The facts of record were complex, involved, and in sharp contention between the parties. It was a record that cried out for study and analysis. Nevertheless, the Carrier official proceeded to assess discipline without reviewing this record because the facts indicate that discipline was imposed upon the Claimants before the Transcript of the proceedings were delivered to Carrier. Such action negates the principle that the Carrier imposed its discipline upon a review of the facts of record. This is the only basis upon which the Carrier may properly act. This is especially called for when the record is long and detailed, and involves complex and contentious matters.

The Board may properly conclude, in light of the existing record, that the Carrier arrived at its finding of culpability on the part of the Claimants on some other basis than a review and analysis of the probative evidence. This it cannot do in light of its contractual obligation to afford the Claimants a fair and impartial hearing and the corollary of a fair and impartial

assessment of this record, because it constitutes material and prejudicial error.

AWARD: Claims sustained for removal of discipline and payment of time lost.

ORDER: The Carrier is directed to comply with the Award, on or before December 18, 1971

/s/ Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member

/s/ J. P. Barton
J. P. Barton, Carrier Member

/s/ W. E. Skutt
W. E. Skutt, Employee Member

October 18 1971