

**Public Law Board 6485**

**Parties to Dispute**

United Transportation Union	)	
Yardmasters Department	)	
	)	
vs	)	<b>Case 4/Award 4</b>
	)	
Burlington Northern Santa Fe Railroad	)	

**Statement of Claim**

This is an appeal on behalf of Memphis yardmaster L. C. Alexander for his alleged involvement of a mantis crane being struck by a rail car on track 2047 at the Carrier's Memphis, Tennessee facility at about 1430 hours on Saturday, October 7, 2000. We are asking that his personal record of a Level S record suspension be cleared and that he be reimbursed one day at the yardmaster rate for attending this investigation on October 27, 2000 as there is no evidence that he violated GCOR Rule 7.13 or Safety Rule S-1.1.

**Introduction**

The Claimant was advised on October 13, 2000 to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged involvement in a collision between a mantis crane and a rail car at the Carrier's Memphis, Tennessee yard on Saturday afternoon, October 7, 2000.

The investigative hearing was scheduled for October 20, 2000. After a postponement the hearing was held on October 27, 2000 at the Carrier's Memphis terminal conference room in Memphis. After the investigation the Claimant was advised on November 10, 2000 that he had been found guilty of violation of Carrier's GCOR Rule 7.13 and Safety Rule S-1.1. The Claimant was issued a Level S record suspension of 30 days. This discipline was appealed by the Organization in the proper manner under

Section 3 of the Railway Labor Act and the operant Agreement up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before this Board for final adjudication.

### **Background**

The Claimant to his case, L. C. Alexander, hired in with the company approximately two years prior to the incident which is under scrutiny in this case. Since working for the Carrier the Claimant had also held assignments as trainman and conductor. He held assignment as a yardmaster for about a year before the incident in question took place. On October 7, 2000 the Claimant was working off the Memphis extra list and he was assigned to Ty Yard. During the Claimant's tour of duty a derailment was discovered on track 2047 in the yard.

A crew was sent to track 2047 to couple and remove the cars from that part of the consist which were still upright. The derailed cars had to be re-railed with the help of a mantis crane. A problem surfaced when the coupling crew and the mantis crane operator ended up on track 2047 at the same time.

The crew sent to track 2047 to couple the upright cars were assigned there under yard job 174. While they were in the process of doing this one of the cars did not couple properly and it started to roll. It rolled into the mantis crane which was fouling track 2047 at this time. There was very little damage done to either piece of equipment as a result of the collision between the train car and the crane since the latter was rolling very slowly.

The damage estimates, found in the record, are as low as \$10 and in either case less than \$100. But the position of the Carrier is that this collision created a dangerous situation and that someone could have been injured. Obviously, this is a hypothesis which is more than reasonable. So the Carrier 's supervision immediately conducted an investigation of the collision.

The position of the Carrier is that after its investigation it concluded that the Claimant, as yardmaster in the yard, was at fault. He should not have allowed the crane to foul track 2047 while the coupling crew was doing their work there. The Claimant was, therefore, charged and a hearing was held. As a result of the findings by the Carrier the Claimant was assessed discipline.

According to the Organization, the Carrier had insufficient evidence, as moving party, to prove that the culprit in the collision, if there was one, was the Claimant. The Organization is asking that the Claimant be exonerated and made whole.

### Discussion

Although the terminal trainmaster who conducted the October 27, 2000 investigation states during the investigation that the Claimant was being charged with the alleged violation of a number of the Carrier's operating rules, the Claimant was only found guilty by the Carrier, after the hearing which was held on August 27, 2000, of violation of Rule 7.13, and Safety Supplement S-1.1. Only these latter two policies will be cited here in this Award. They read as follows, in pertinent part.

### **Rule 7.13**

During humping operations, before a train or yard crew member goes between engines or cars on a bowl tract to couple air hoses or adjust coupling devices, or before an employee performs maintenance of a bowl track, protection must be provided against cars released from the hump into the track as follows:

- The employee requesting protection must notify the employee controlling the switches that provide access from the hump to the track where the work will occur.
- After being notified, the switch controller must line any remote control switch against movement to the affected bowl track and apply a locking or blocking device to the control for that switch.
- The switch controller must then notify the employee that protection is provided. Protection will be maintained until the switch controller is advised that work is complete and protection is no longer required.

### **S-1.1**

Employees must participate in job safety briefing before beginning work and when work or job conditions change. The briefing includes a discussion of the general work plan, existing or potential hazards, and way to eliminate or protect against hazards. Outside parties or contractors involved in the work or who are in the work area must also be included in the job safety briefing.

After the collision took place at 2:30 PM in the Memphis yard on October 7, 2000 an investigation was conducted by the Carrier, as noted. Two Carrier officers gathered information about what happened. The Board observes that their findings are not part of the record of this case. These officers did not testify at the investigation which was held on October 27, 2000.

There was testimony at the investigation by the terminal trainmaster of the Memphis terminal complex, J. P. Steward. According to this witness the "...crew went

into (track 2047),<sup>1</sup> coupled in...and then (the Claimant) told (him) that the mantis (had been) hit...". Steward testified that after the accident he asked the Claimant if the "...track was blocked out..." for the carmen on yard job 174 to get the cars out. He states that the Claimant responded in the affirmative. Steward then testified that "...I think later on we found out it was blocked to him is basically my recollection. He blocked it out to himself, not to the mantis...". After discussing the general plan for moving cars around the yard for the evening the trainmaster testified that he had been aware of the derailment on 2047 although he did not see the derailment from the tower when he stopped by there where the Claimant was working. He states that the cars had to be removed but "...some of the cars could have been picked up without the track being completely empty...". He stated that she knew the mantis had been called but did not know it was "...on property and had gone into (the) track (2047)...". He stated that after the collision two people were "...designated...to handle the basic investigation and interview...crew members...". The two people were Carl White and Barbara Anderson. According to Steward the thrust of the investigation was that supervision "...just wanted to make sure that we didn't have anybody hurt...". This witness states that he himself did talk to "L.C. & Pat...", obviously referring to the Claimant and to the crane operator. But he does not say what the result of this conversation was except that it was about "...basically what happened...". He provides no detail beyond this comment. He states that "...a lot was going on..." at the

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<sup>1</sup>In the transcript track 2047 is sometimes simply referred to as track "47".

Memphis yard that afternoon.

There is testimony by mechanical foreman Carl White. He states that he went to the scene of the collision at 4:00 PM which would have been about 1½ hours after it occurred. He interviewed both the crane operator and the Claimant. According to this witness the crane operator told him that he had called "L.C." (Alexander) on the phone...

"...concerning the derailment (and) that he was coming in to re-rail it. I believe Mr. Alexander had told him that it was already blocked out, or he was going to block it. I think he said he had it blocked out in his name...and they had some cars they need to take out. And (the crane operator) has left a phone number for him to call him when he got ready to come in, (to) take those cars out..."

This witness states that he was not sure who wanted the cars moved before the mantis was to come in and re-rail the cars, whether it was the crane operator or the Claimant.

Testimony by the north side yardmaster at the time of the incident, R. C. Estes was that when a mantis "...goes into a track from (the north end)...or on any end they receive permission from (him) to go into those tracks..." and that this did not happen on the day in question. He was not advised by carmen or the mantis operator or "...anyone else..." that the mantis was going down into the track (2047) to work on the derailment..

Testimony by the mantis operator W. P. Vaiden is that he and two other crew members were called about the derailment which had occurred on track 2047 and that they arrived at this location with the mantis. Vaiden states that he then called the tower and talked with the Claimant. According to Vaiden he...

"...asked (the Claimant) when he was going to be able to move the cars off the south end of the cars that was derailed. And he told (him) that it was going to be a while before (the mantis) could get in there...(the mantis crew) then looked at the

cars, walked around them, looked to see just exactly what (they) were going to need to do...and (they) decided (they) could go ahead and start at the north end of the track...re-railing the cars..."

After Vaiden states that he decided to go ahead and start re-railing the derailed cars

Vaiden testified that he then called the Claimant again and asked him if track 2047 was

"...blocked out..." According to Vaiden, he had the following conversation with the

Claimant at this point:

"...At the time he said, 'yes, it's blocked out'. And he asked me if I was going to need it...because in the first conversation we had he said it may be an hour or longer before he could get in there...And he said, 'are you going to need it clear within an hour?' and I said: 'No...'"

After telling the Claimant that he would not need the track cleared within an hour this witness testified that he then proceeded to start the re-railment with the crane by telling the Claimant that he should call him "whenever (he) need(ed) the track...". After rerailing one car and in the process of re-railing a second the crane crew felt a "bump" as a train car, which had not coupled properly, rolled into the crane as the crew from yard job 174 were working on track 2047. The crane operator admits that he was fouling the track when the collision occurred. He states that he knew that the track had been blocked out by yardmaster Alexander. But when further queried on this important issue and when he was asked if the track had been blocked out for him, Vaiden states: "No...(the track had been blocked out for) someone else...". Vaiden does not testify that the track had been blocked out for him. The witness also testified that he gave the other crew members working with him on the crane "...a safety briefing that (the Claimant) had given to

(him)...". According to this witness it was his understanding that the Claimant was to "...contact (him) prior to removing the cars so (he) could be in the clear..." since he told the Claimant that "...we were going to be in there working, re-railing these cars...".

Testimony by the Claimant is that he did receive a phone call from the crane operator about the derailment and the Claimant told him that he had blocked track 2047 because of the derailment. He states that the crane operator then told him that he was going to "...see what he could do on the north end...and that (he) needed to let him know when we moved the cars from the south end...". He states that the crane operator, Mr. Vaidem, then gave him a cell phone number. The Claimant subsequently unblocked the track to let yard job crew 174 on track 2047. The Claimant states that he was "not aware that the mantis was...working at that particular time because the last conversation that (he) and the crane operator had was that I was to let him know when we were going to move the cars...". He states that he did not know that the mantis crane was fouling the track when he unblocked it for the yard crew to go in and retrieve the upright cars and pull them off this track.

### **Findings**

A review of the testimony at the investigation warrants the following conclusions. First of all, there can be no doubt that the Claimant had blocked track 2047 on the date of October 3, 2000 at the Memphis yard after it was discovered that there was a derailment on this track. Everyone who testified at the investigation states that this was their



understanding of what happened. This includes the trainmaster who interviewed the Claimant after the collision between the rail car and the crane, and it also includes the mechanical supervisor who also interviewed the Claimant after the collision. At the investigation the Claimant testifies to the same thing which he had told both of these supervisors on the date of the collision. The crane operator's testimony is consistent with this. He states that when he arrived on the scene with the crane and its crew he called the Claimant and was told that the track had been blocked off. Both the Claimant and the crane operator testify that the Claimant told him that the upright cars would be removed from the track in an hour or so after the crane arrived on the scene. The Claimant never told the crane operator that the track had been blocked off for him. The crane operator admits that the Claimant never told him this. The crane operator called the Claimant and asked him to call him when the yard crew was coming to remove the upright cars. The crane operator gave the Claimant a cell phone number to this effect. The crane operator then proceeded to do what appears to be the inexplicable. On his own, even though he admits that a safety instruction had been given to him by the Claimant which he passed on to the mantis crew, and even though he knew that track 2047 had been blocked, he then proceeded to foul track 2047 with the mantis crane. The crane operator explicitly testified that he fouled the track. While the crane was fouling the track, which the Claimant states he did not know about, the Claimant released the track for the yard crew to do their work. The crane operator testified that he told the Claimant that he was going to proceed to start re-railing cars even though both of them knew that the track had been

blocked off. The Claimant states that the crane operator told him no such thing. The Board is unpersuaded that the crane operator's version of these facts is correct. Such amounts to the Claimant being told that his blocking orders were simply being ignored. The crane operator did ignore these orders. But reasonable minds are hard pressed to believe that he would have been so blatant as to have stated this to the yardmaster.

What the evidence suggests here is that the crane operator acted on his own initiative without authority when he was told that the track where the derailed cars were located was blocked. But instead of waiting for clear instructions about when the block would be lifted specifically for he and the crane crew, the crane operator proceeded to do what amounted to taking his chances and start the re-railing process by fouling the track. The testimonial evidence does not persuade the Board that the Claimant was the cause of the collision which occurred on the date of October 2, 2000 in the Memphis yard. The collision was the result of actions by the crane operator.

Nor does the Carrier provide other credible evidence in this case to warrant conclusion that the instance claim should not be sustained. An investigation was conducted by two of the Carrier's officers shortly after the collision occurred. Their findings, whatever they may have been, are not part of the record of this case. The Carrier's officers conducting that investigation did not appear at the investigation which was held on October 27, 2000. The Board does have testimony by the trainmaster and the mechanical supervisor, but they only testified about querring the Claimant and the crane operator.

The Organization argues that the Carrier's "...Pro-Yard hump program allows (a) yardmaster to block out tracks in the hump, and they are monitored, and (there is a record) of the history of their being blocked out (which ) is available...". According to the Organization, the Claimant was "...in control of..." blocking out tracks in the Memphis yard on the date in question, and the Carrier was in a position to produce "...documentation that would have shown exactly who blocked out what track, when and why...".<sup>2</sup> That such records exist is not disputed by the Carrier. On this point the Board concludes that had this archival information been produced as corroborative evidence it would have but supported the consensus of all of the witnesses at the investigation, including the crane operator, that track 2047 had indeed been blocked out when the crane operator fouled it.

As moving party the Carrier bears the burden of proof in this case. There is insufficient substantial evidence of record to sustain the allegation that the Claimant violated Rule 7.13 on the date of October 7, 2000.

As far as Rule S-1.1 is concerned, switchman Johnson testified at the investigation that a safety briefing was conducted on the moves to be made by the crew of yard job 174 and this is not refuted. The crane operator also testified that he had received a safety briefing from the Claimant which he shared with the crew members on the crane.

Upon the full record before it the Board concludes that the claim must be

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<sup>2</sup>Quotes taken from Carrier's exhibit 3 (also Employees' exhibit H).

sustained. The Board will rule accordingly.

**Award**

The claim is sustained in accordance with the Findings. The level S record suspension shall be removed from the Claimant's record. The Claimant shall be paid for any loss in pay which may have resulted from the notice of investigation which was issued to him on October 13, 2000. Implementation of this Award shall be within thirty (30) days of its date.



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Edward L. Suntrup, Chairman & Neutral Member



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G. L. Shire, Carrier Member



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J. R. Cumby, Employee Member

Date: 9-17-2002