

Public Law Board No. 6584

Parties to Dispute

United Transportation Union)	
Yardmaster Division)	
)	
vs)	Case 6/Award 6
)	
)	
Soo Line Railroad Company)	
Canadian Pacific Railroad)	

Statement of Claim

Request that Yardmaster R. Ruhl be reinstated as yardmaster with full seniority rights unimpaired; pay for all lost time; pay for any health benefits; pay for any lost vacation entitlement; pay for any other entitlements and for the removal from his record the discipline assessed.

Background

The Claimant was advised on October 29, 2002 to attend an investigation in order to determine facts, and place responsibility, if any for allegedly failing to maintain a safe switching operation because of his involvement in an incident that took place on Sunday, October 27, 2002. After an investigation was held on November 1, 2002 at the Carrier's facilities located at Bensenville, Illinois the Claimant was advised that he had been found guilty of failing to maintain a safe switching operation. According to the letter of discipline sent to the Claimant on November 7, 2002 the Carrier states that the Claimant was in violation of Rule 7.13 and was disqualified, as of that date, as a yardmaster. The Claimant was advised that he was free to exercise his seniority rights as a switchman.

This disqualification was appealed by the Organization. This appeal was denied by

the Manager of Yard Operations at the Carrier's Chicago Service Area on grounds that the actions by the Claimant on October 27, 2002 put other employees in jeopardy. Absent settlement of the claim on property after it had been appealed properly up to and including the highest Carrier officer designated to hear such the appeal involving Mr. Ruhl was docketed before this Board for final and binding adjudication.

Discussion

The rule referenced by the Carrier in this case is the following which is cited here in pertinent part.

Rule 7.13 Protection of Employees in Bowl Tracks

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

- The employees 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.

Discussion

On the date of October 27, 2002 the Claimant to this case, Ronald W. Ruhl was working as the day hump yardmaster at the Carrier's Bensenville, Illinois hump yard.

According to the record an engineer and a crew were on an engine on track C-9 of the yard coupling cars. Testimony at the investigation by the yard's signal and communications supervisor is that data from the pro-yard system showed that the Claimant changed from hump to trim mode which aborted a timer and threw the switch for track C-9 which allowed cars originally routed to track C-11 to enter C-9. This resulted in an unsafe switching operation that could have caused injury to the crew on the engine working the C-9 track.

Testimony by the locomotive engineer who was on track C-9 at the time of the incident is as follows: "...I (had) requested (that) the lock be removed so I could take off head room (for the auto cars being put together). There was something said like two cars coming off the (hump and) I will let you guys know when you can come out. That is the last I knew about it. Then I saw two cars coming down the (hump), assuming they were going onto (C)-11, but then I watched them and they were coming toward me and all of a sudden the switch was lined onto (C-9) where I was sitting. I called (the crew members) and I said, cars coming in on top of us, get out of the way, and I got off the engine..."¹

In his testimony at the investigation the Claimant does not deny that the engineer's and the supervisor's descriptions of what happened are accurate. He also intimates that he got flustered and panicked when he realized what was happening. When asked if he could describe "...in (his) own words..." what happened on the day in question the Claimant

¹Trans. @ p. 11.

states the following, in pertinent part: "...(engine and crew)1411 was in track (C)-9...(the) crew requested...(a)...block up (of this) track so (1411) could come on the lead for head room (to stretch the tracks)...I told 1411 that I got two cars coming for track (C)-11 (and) once they (were) clear, I will give you guys the line up. Their block was already moved. I guess I was in a rush...so I was under a lot of pressure from...the Ops coordinator because he was telling me to get 1411 moving, keep um moving, got to make the train. And I watched my pro-yard screen, I last seen the (two) cars (in question) lined up for (C)-11, so I felt that they were already, if not in the clear, you know off the lead...but by the time I realized that they were still on the lead (the two cars) were by the C-11 switch, and heading for (track C)-9..."²

In filing an appeal of the disqualification which resulted from the incident on October 27, 2002 at the Bensenville hump yard the vice general chairman of the Organization, who was at the investigation held on November 1, 2002 representing the Claimant, states the following: "...Mr. Ruhl has only one year with yardmaster experience, which was not full time in any one position. It appears from testimony from witnesses that Mr. Ruhl is a good employee, and that others do like working with him. Staying with company policy to help coach and bring along lesser experienced employees would have been a more appropriate way to solve this situation (of what happened on October 27, 2002 at the Bensenville hump yard)...I believe that Mr. Ruhl should be

²Trans. @ p. 19-20.

reinstated as yardmaster, and that more training should be offered for such a high profile job...".³

In further arguments the Organization states that it believed that the pro-yard system did not function properly on the day in question otherwise the two cars would have ended up on track C-11 and not C-9. The Organization also observes that the Claimant was put under considerable pressure on the day in question to hurry things along which could also have contributed to the incident. Concurrently, the Organization does state that a "mistake" had been made by the Claimant on the day in question because of all of the "...constant interruptions..." but that rather than a disqualification the Claimant ought to have been "coached" on his mistake so that corrections could be made for the future.

Findings

There is indisputable evidence in this case that two cars ended up on the wrong track on October 27, 2002 at the Carrier's Bensenville, Illinois hump yard and that the Claimant was the yardmaster in charge. Either the cars ended up on track C-9 rather than C-11 because of human error, or because of a flaw in the relatively new pro-yard system that had been installed before the incident happened.

The Organization makes an argument that the cause of the incident lay with the pro-yard system. Concurrently it also argues that the Claimant made a "mistake" on the

³Yardmaster's Exhibit D.

day in question because of interruptions. The Claimant himself testifies that he was flustered because of pressure he felt to get the job done. Testimony by supervision is that it did not detect any problems with the functioning of the pro-yard system on the day in question.

In view of these considerations, therefore, the preponderance of evidence points to human error on the part of the Claimant on the day in question as the cause of the incident, for which he must be held accountable. While the parties do not spend a great deal of time on this issue, either at the investigation, or in the full record of this case, what happened when the two rail cars ended up on the wrong track at th hump yard on October 27, 2002 did create a safety hazard for the engineer and members of the crew of 1411. This Board is fully conscious of the safety issues of this industry and its rulings must reflect precedent that places the safety of the industry's employees and supervision at top priority.

In view of the full record before it the Board has no alternative, therefore, but to find the Claimant guilty of violating GCOR Rule 7.13 on the morning of October 27, 2002. His actions placed the engineer and the crew of 1411 in potential harm's way when two cars ended up on the wrong track in the hump yard.

The Organization argues that the Claimant had not been properly trained in the use of the automated pro-yard system and it also argues that he was less than an experienced yardmaster and that both contributed to the incident that occurred. A search of the record fails to warrant conclusion that the Claimant was insufficiently trained for the position he

held. On this count the Carrier does state, however, that the Claimant had been "...given opportunities to improve himself which have not been successful..."⁴ The Board is not apprised, in any detail, exactly what those opportunities were. But that such did happen is not denied by the Claimant at any point in the record.

It is true that the Claimant was a relatively new yardmaster working the hump at Bensenville. The assumption of the authority of a hump yardmaster requires, however, not only requisite skills. It also requires the personal disposition on the part of a yardmaster to act correctly under stress. In a safety conscious industry such as this one, which is noted above, such determinations must be made before an accident takes place, and not after. Both the Claimant and the Organization imply in their testimony and arguments before this Board that the position of a yard hump yardmaster implies dealing with pressure and interruptions. There is evidence, that on the date of the incident under scrutiny in this case, the Claimant dealt with neither in a manner appropriate for a yardmaster. Lastly, the Carrier observes in the record that this is not the first incident involving safety for this Claimant. Prior to the decision to disqualify him as a yardmaster he had been cited a number of times for problems with job performance, and had received a five (5) day suspension for a safety violation.

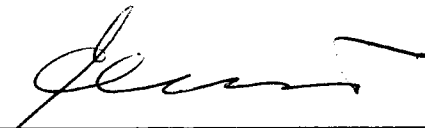
Upon the record as a whole, therefore, the Board is not persuaded that the actions taken by the Carrier in this case were arbitrary or capricious. The Board must rule that the

⁴Yardmaster's Exhibit E. See also Exhibit G.

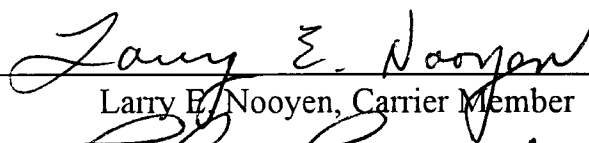
claim cannot be sustained.

Award

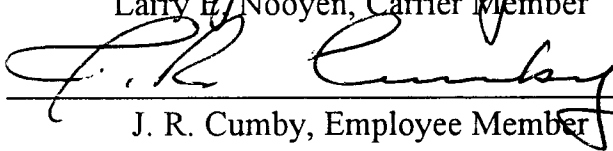
The claim is denied.



Edward L. Suntrup, Chairman & Neutral Member



Larry E. Nooyen, Carrier Member



J. R. Cumby, Employee Member

Date: 10/21/2004