

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 30026
Docket No. 49907
20-1- NRAB-00001-190037**

The First Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

**(Brotherhood of Locomotive Engineers and Trainmen
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“It is hereby requested that Engineer J. L. Langevin’s discipline be reversed with seniority unimpaired, requesting pay for all lost time, with no offset for outside earnings, including the day(s) for investigation with restoration of full benefits and that the notation of Dismissal be removed from his personal record, resulting from the investigation held on August 24, 2017.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 July 30, 2017, Claimant J. L. Langevin was working as the Engineer on train Z-WSPSBD9-28L, delivering the train to San Bernadino, California. Upon arriving at San Bernadino, the Claimant was instructed to yard his train on tracks 213 and 223, a single stretch of track separated by a middle crossing with a curved switching lead.

After spotting track 213, the Claimant's Conductor cut away from the cars on 213 and instructed the Claimant to pull ahead to spot track 223. The Claimant pulled ahead approximately 222 feet when four multiplatform intermodal cars derailed, turning on their side on an adjacent lead. A multi-departmental examination was conducted to determine the cause of the derailment. As part of the effort, a Road Foreman of Engines (RFE) reviewed the locomotive downloads from the Claimant's train, and he took exception to the Claimant's train handling.

By letter dated August 7, 2017, the Claimant was notified of an Investigation regarding his alleged improper train handling. The notice indicated possible violations of GCOR 1.6 Conduct, ABTHR 103.0 Train Handling, ABTHR 103.6.1 Starting Train and ABTHR 103.11 Switching Movements. The Investigation was held August 24, 2017, during which evidence was introduced which indicated that, after making a 20 pound brake pipe reduction to secure the cars left in track 213, the Claimant pulled ahead around the curve on the lead with the 20 pound brake pipe reduction still applied, leading to a string line derailment. Consequently, by letter dated September 20, 2017, the Claimant was notified that he had been found in violation of the charged Rules, and he was dismissed from service.

The Organization appealed the Claimant's discipline pursuant to the applicable collective bargaining Agreement, but the parties were unable to resolve the matter on the property. The case now comes to us for resolution.

The Organization's position is that the Carrier failed to provide the Claimant with a fair and impartial Investigation. It states that the hearing officer had predetermined the Claimant's guilt and that his objective was to prove that the Claimant was solely at fault.

The Organization also maintains that the decision to treat the event as willful indifference to duty and to discharge the Claimant for this single event is arbitrary and unreasonable. It states that the testimony adduced at the Investigation established that the Claimant was acting on the advice of his peers in an attempt to make the move safely. The Organization describes the process of spotting a train in this yard as being a frustrating experience, in which the rear car of the head portion will roll back if air brakes are not applied. It says that this can cause a dangerous situation because trucks are routinely waiting for the head portion to clear so they can use the middle crossing and that a collision can occur if the rear end rolls back.

To address that possibility, the Organization contends that Engineers routinely “hold the set” or maintain a brake pipe reduction when spotting the head portion. It points to testimony from the Claimant’s Conductor which indicated that in some cases Engineers do pull with air set. The Organization also characterizes testimony from RFE Moss as supporting the Claimant’s actions in that he said that after the Claimant had released the automatic brake valve and charged the brake pipe, as he began to pull he could “make whatever brake pipe reduction that he found necessary in order to properly spot to the next pad at 223.” It also contends that a statement from RFE Waddell, in which he described the proper train handling procedures, supports the practice of pulling to a spot with air brakes applied. The Organization also challenges the idea that the Claimant used excessive tractive effort in making the move, noting that the same amount had been applied earlier. It concludes that the record reflects the Claimant was attempting to make the move in the safest manner possible.

The Organization further takes issue with the Carrier’s characterization of the offense based on the cost of the derailment and the damage to customer lading. It states that such is the case with most derailments and that such factors do not indicate an employee’s actions are willful or malicious so as to justify dismissal. The Organization points to the Claimant’s years of service and lack of significant operating rule violations, and it urges that the decision to dismiss the Claimant immediately based on a single event is arbitrary and capricious. It requests that the Claimant’s dismissal be overturned.

The Carrier’s position is that the Investigation was fair and that the facts establishing the Claimant’s violation of the cited Rules are undisputed. It points to the locomotive downloads, expert witness testimony and photographic evidence as proof that the Claimant’s conscious decision to violate the Rules directly resulted in a major derailment. It maintains that the discipline assessed was appropriate in those circumstances.

The Carrier first notes the evidence developed from the locomotive downloads. It states they show the Claimant made the 20 pound brake pipe reduction, and after the cut was made, the Claimant pulled ahead with the 20 pound reduction still applied. It observes that the Claimant advanced the throttle to notch two and then to three, reaching a speed of five mph before the train derailed. The Carrier posits that such actions violated multiple Rules, including ABTHR 103.0 Train Handling, which provides in pertinent part:

“Locomotive engineers must exercise judgment and plan ahead to operate their train safely and efficiently. The engineer is responsible for controlling the slack in the train. Good train handling requires the proper combination of throttle modulation, dynamic braking, and air braking to:

**Protect yourself and others from injury.
Prevent damage to track structure and equipment.
Protect lading.”**

The Carrier points to the testimony of RFE Moss, who stated that the Claimant’s train handling was directly responsible for the derailment. RFE Moss testified that he had spotted trains there and worked at that location for ten years. Based on his experience he found it startling that an engineer would try to pull a train like the Claimant’s through the yard around a curve while holding a 20 pound brake set, the same amount of air required to secure a train which will be left unattended. He opined that based on the train makeup and the length of the train and the amount of tractive effort employed, simple physics would result in a string line derailment every time.

The Carrier also cites ABTHR 103.6.1 Starting Train, which requires that in curved territory use only enough power to start the train. It also notes that the Claimant conceded he had not followed that Rule. The Carrier emphasizes that the Claimant further admitted that he knew he had the air set when he pulled forward, and it takes particular issue with the Claimant’s testimony that “there’s certain rules out there that should not apply to certain trains due to makeup.” It urges that it is not for the Claimant to decide which train handling Rules to follow and that the Claimant’s willful actions, which he described as “trying something different” resulted in a major derailment, costing the Carrier hundreds of thousands of dollars.

The Carrier states that the decision to dismiss the Claimant was not an arbitrary one. It notes that its Policy for Employee Performance and Accountability (PEPA) places employees on notice of the potential repercussions for a variety of Rule violations, including Stand-Alone Dismissible Violations which include conscious or reckless indifference to personal safety or safety of others or the public, insubordination, or Rules violations that could or does result in a serious collision or derailment or extensive damage to property. The Carrier also states that the Claimant’s discipline history reveals multiple infractions over the course of his career, including three Serious Level

violations. The Carrier concludes that the Claimant's willful conduct had serious consequences which could have been worse and that in light of all the circumstances, his dismissal was appropriate.

We have carefully reviewed the record, and we find no indication that the Investigation was unfair or any other procedural barriers to our consideration of the merits. With respect to the Claimant's Rule violations, the Carrier is obligated to produce substantial evidence to support the charges, and here we find that burden has been met. The locomotive downloads unquestionably show that the Claimant retained a 20 pound brake pipe reduction when he pulled forward on the curve, and the Claimant admitted he intended to retain the set while he moved ahead. The testimony of the Carrier witnesses firmly establish that the Claimant's decision to apply the tractive force he did with the brakes set while on a curve was in violation of the train handling Rules introduced at the Investigation. And while he attempted to excuse his choice as one that would save time, we note that the Claimant conceded his actions were not consistent with the Rules.

We have also carefully reviewed the testimony and statements of the Carrier witnesses, and we do not agree that they condone the Claimant's train handling decision. To the contrary, they found it inappropriate. Both RFEs indicated that air brakes should be fully recharged after making a cut and that they should be applied again to make the next stop. We do not believe they support a practice of beginning to pull forward with a 20 pound set, especially on a curve and with the tractive effort applied here. Even the Claimant stated that in doing so he was trying something different. With respect to the Organization's argument that the tractive effort employed on the final move was similar to an earlier application, we note that there is no indication the train was on a curve at the earlier instance or that other factors were similar so as to negate the finding that excessive effort was applied at the time of the derailment. Moreover, we do not find the testimony of the Claimant's Conductor, which was not specific as to train makeup or other factors, to require a different conclusion.

Having found that the charges were proven, we next address the level of discipline assessed. As noted above, the Organization contends that dismissal is arbitrary and excessive for a single offense, especially in light of the Claimant's years of service. It also urges that the costs associated with the derailment should not factor into the discipline decision. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously. Here, the Rules violations are

serious, and the resulting damage was significant. While we concur that monetary damages alone do not always warrant dismissal, we do not think the Carrier is obligated to ignore them entirely. And although the Claimant does have significant tenure, his discipline record contains many entries as well. In light of all the circumstances, we cannot find that the Carrier's judgment was arbitrary or capricious, and we will not substitute our judgment for the Carrier's now.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 29th day of January 2020.