

PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former Fort
Worth and Denver Railway Company)

STATEMENT
OF CLAIM:

Claim of Switchman W. N. Herpich, Amarillo, Texas, for all time lost when suspended 15 days plus one (1) day at pro rata rate account required to attend investigation, discipline assessed in connection with UFIX 5037 rolling out and striking RBOX 10712 on December 20, 1981 (S-5675).

OPINION OF THE BOARD

Claimant Herpich, in this Award, and Claimant Thompson in subsequent Award No. 133, were Switchman and Foreman respectively in this dispute.

The record discloses that on December 20, 1981, these claimants were working on Amarillo Yard Assignment No. 302. During their tour of duty, they crew had two (2) cars to spot Hol-Tex in the South Forty Industry Area. In order to accomplish this, the crew coupled into two (2) UFIX Coal Cars, located on the East End of North Pass and then with these two cars coupled into one UFIX Car and shoved these three (3) cars to the straight leg of Wye. These three cars were placarded "bad order". The record discloses that inquiry had been made by this Crew as to the reason for the "bad order" placards to the Yardmaster. The Yardmaster had no knowledge of why the cars were placarded "bad order".

In any event, these three cars were cut-off and tied down by Claimant Herpich. The Crew then proceeded to Hol-Tex, lined the switch for Hol-Tex, then proceeded to shove and spot. Claimant Herpich looked back up the hill and saw the three (3) UFIX Cars rolling towards them. The Crew stopped and pulled Westward, but Car UFIX 5037 struck RBOX 10712, derailing it. As a result of this derailment, an investigation was held and Claimant Herpich was assessed fifteen (15) days suspension.

It is the opinion of this Board that this Claim should be sustained. Persuasive in this case is the fact that the "bad order" cars had been sitting in the North Pass for a substantial length of time. These cars moved approximately fifteen (15) cars North and left on the straight leg of the Wye. The North Pass and the straight leg of Wye run parallel to one and another, and both tracks are on a downhill grade to the west. This Crew had every reason to believe that the air brakes would hold on the straight leg of the Wye for the reason that the involved cars had been sitting on the North Pass, which is parallel to the straight leg of the Wye, with both tracks grading downhill to the west.

Carrier in this instance has failed to prove any negligence on the part of this Claimant. Carrier has failed to show what should have been done that was not done. (PLB 2346 - Award No. 4). There is no evidence in this case to the effect that Claimant did not exercise due care and did not fulfill his responsibility under the Operating Rules.

AWARD: Claim sustained.

Carrier is directed to comply with this Award within thirty (30) days from the date hereof.

Signed at Fort Worth, Texas this 17th day of JUNE, 1984.


Gene T. Ritter, Chairman


J. A. Alford, Organization Member


B. J. Mason, Carrier Member