

PUBLIC LAW BOARD NO. 2236

Award No. 60
Case No. 60

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

and

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM:

Yard Helper, R.L. Stine, is seeking four hours and fifty-five minutes at yard rate, for attending an investigation in the office of the Trainmaster, Port Covington, on January 22, 1981, and from removal from his service record of a reprimand assessed as a result thereof.

FINDINGS:

On January 14, 1981, at approximately 6:15 p.m., Claimant was coupling a caboose to the east end of a line of card in No. 7 Ferry Bar at Carrier's Port Covington Yard. After the caboose was coupled, but before Claimant could get out from between the cars, the crew at the west end of Ferry Bar No. 7 began moving the train westward. The caboose struck Claimant in the chest and knocked him to the ground. Claimant managed to get clear of the moving train, but the radio he was carrying fell out of his coat pocket and was run over by the caboose.

On January 22, 1981, an investigation was held in order to determine Claimant's responsibility, if any, for the destruction of the radio. On the basis of the evidence adduced at the hearing, Claimant received a reprimand for his "...responsibility in connection with Yard Engine 3761 and Yard Engine 4116 switching simultaneously at both ends of No. 7 Ferry Bar, resulting in

destruction of Walkie-Talkie Radio #1446..., in violation of Rule 406 of the Chessie System Operating Rules..."

The Organization filed a claim requesting that the reprimand be removed from Claimant's record and that he be compensated for time lost while attending the investigation. The Claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause; and if not, what should the remedy be.

In order for the discipline to be upheld, there must be a showing that the destruction of the radio was in some manner Claimant's fault. Carrier has not argued that Claimant was in some way responsible for the improper movement of the train. It must therefore be concluded that Claimant's reprimand was based solely on what Carrier considers to be improper handling of the radio.

Carrier's Operating Rule 406 states that "employees shall be responsible for careless or willfully negligent acts which result in loss, damage, or destruction of radio equipment."

A person who has been "careless" is generally understood to be someone who has failed to exercise that care that an ordinarily prudent person would have exercised in the same circumstances. The Carrier argues that employees, such as Claimant, who do not carry the radio in a belt and holster, "exercise whatever degree of care and prudence may be necessary to assure the equipment, thus

handled, will not be misplaced, lost, dropped or destroyed, as here, whether such care be construed as additional, more than normal or usual or even extraordinary." This suggests that Carrier intends to hold an employee responsible for the loss of radio equipment regardless of how the radio is carried or how careful the employee may be. However, Rule 406 does not require that a radio be carried in any particular manner, and it does not allow Carrier to hold employees strictly accountable (accountable without fault) for the loss of radio equipment. Rather, it states that an employee must at least be "careless" on order to be held "responsible". Therefore, the "ordinarily prudent person" standard, outlined above, must be applied in the present case.

The question thus becomes whether Claimant exercised the same degree of care in carrying the radio as would an ordinarily prudent yard helper. It is the opinion of this Board that the answer must be in the affirmative. As Carrier states in its submission: "Many employees in train service, using the walkie-talkie radio, have no desire or inclination to carry a belt and holster, a somewhat bulky item, to retain the device and instead carry it in a convenient shirt or pants pocket." The inference is that it is a generally accepted practice to carry a radio in a pocket. Such use protects the radio from loss or damage in the ordinary course of a yard helper's duties, which is all that Rule 406 requires. The Rule does not require an employee to ensure that the radio is protected while he is being struck and nearly run over by a caboose. Therefore, it must be held that Claimant was not "careless" within the meaning of Rule 406.

Trainman's Rule 97 states that an employee is entitled to pay for actual time lost in attending investigations, unless he is held responsible for the

destruction of the radio, he would normally be entitled to pay for time lost. However, the Organization has offered no evidence that Claimant actually lost time from his assignment while attending the investigation. Therefore, that portion of the claim requesting pay for time lost cannot be sustained.

AWARD

Claim sustained. Carrier shall remove the Reprimand from Claimant's record immediately.

Nicholas Kumar
Neutral Member

Lloyd J. King - DISSENTING
Carrier Member

Peter J. Patsouras
Organization Member

Date: June 4, 1984