

PUBLIC LAW BOARD NO. 5263

**Case No. 211
Award No. 211**

United Transportation Union)
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)
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vs)
)
Union Pacific Railroad Company)
)

PARTIES TO DISPUTE

STATEMENT OF CLAIM

Conductor D. L. Kimble, for the reinstatement to the services of the Union Pacific Railroad Company (former C. & N. W. Railway Company), with vacation and seniority rights unimpaired, the payment of vacation allowance for time wrongfully discharged, and the scheduling of a vacation period consistent with seniority ranking, in addition to the payment of any and all health and welfare benefits until reinstated, including reimbursement for any medical payments made while discharged, the payment of all Railroad Retirement taxes based on all lost time with compound interest at 1.5 percent monthly, including compensation for time spent attending investigation held on September 15, 2005, when charged with an alleged responsibility "in connection with your alleged violation of GCOR Rule 6.28 'movement on other than Main Track', which resulted in cars being handled by your assignment being shoved through east end of crossover switch from working lead to R&D lead, at the west end Global111, Yard # 14, at approximately 1710 hours, on 8/31/05, while on duty at R03R, and UTL3 respectively."

FINDINGS

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

On September 22, 2005 Carrier dismissed the Claimant from its service. As a result of an investigation held on September 6, 2005 the Carrier found the Claimant violated Rule 6.28 on August 31, 2005. This offense is a Level 4 violation. The Claimant was already at a Level 4 under the Carrier's Progressive Discipline policy. Therefore, this offense resulted in dismissal.

On August 31, 2005 Claimant was working as a Remote Control Conductor on RO3R when the assignment ran through switch 101/102 at Global III Yard. The Carrier found the Claimant violated Rule 6.28 which reads:

6.28: Movement on Other than Main Track

Except when moving on a main track or on a track where a block system is in effect, trains or engines must move at a speed that allows them to stop within half the range of vision short of:

- Train.
- Engine.
- Railroad car.
- Men or equipment fouling the track.
- Stop signal.
- or
- Derail or switch lined improperly.

A review of the record shows there was not one iota of testimony as to the speed the train was moving when it ran through the switch.

The Organization has argued throughout the handling of the case that the Claimant should have been charged with violating Rule 8.15 which reads:

8.15 Switches Run Through

Do not run through switches, other than spring switches or variable switches. If a rigid type switch is run through, it is unsafe and must be protected by spiking the switch, unless a trackman or other employee takes charge.

An engine or car that partially runs through a switch must continue movement over the switch. The engine or car must not change direction over a damaged switch until it has been spiked or repaired.

The Carrier has the burden to prove the Claimant violated its rules as charged. The Carrier's response to the Organization's argument about the proper rule was as follows:

The Organization's claim that the claimant's discipline is improper because the Carrier charged him with the wrong rule violation is baseless. This is because, the claimant's rule violation involved his shoving cars through a switch that was other than the main line. The specific rule that addresses such violations is rule 6.28. Even if the claimant was charged with the wrong rule, his actions would still have violated

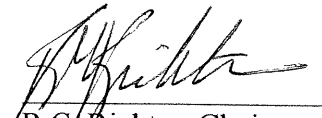
a Carrier operating rules (sic) and put the life and limbs of his fellow Carrier employees in danger. Consequently, there is no basis for the Organization's claim.

Claimant was never asked about the speed he was going when he ran through the switch. The Claimant testified that the sun was in his eyes and he could not tell if the switch was lined until it already had been run.


While a rule has been violated, it was not Rule 6.28. The Carrier has failed to prove the Claimant violated the rule. The Claimant shall be reinstated with seniority unimpaired and with pay for all time lost.

AWARD

Claim sustained. Carrier is ordered to comply with this Award within 30 days from its date.



R.G. Richter, Chairman
Neutral Member



R.A. Henderson
Carrier Member



M.J. Reedy
Employee Member

Dated December 18 2006