

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal of level 2 discipline from the record of engineer J. D. Tindol with him being made whole, which includes but not limited to lost earnings, all vacation rights, cobra payments and any other penalties associated with this discipline."

FINDINGS:

On April 17, 2005, at approximately 1:45 a.m., J. D. Tindol was switching cars at Gregory, Texas while working as Engineer on Train RBXGR-15. At the direction of his Conductor, Engineer proceeded through a switch from the mainline to the rock spur track. Crew coupled into a cut of cars, then, immediately returned - with the Conductor directing the reverse movement. Upon completing the reverse movement, the Conductor was unable to reline the switch; whereupon, he notified Carrier Officer.

After completing preliminary investigation, Carrier Officer mailed Engineer Tindol a letter of investigation, directing:

"Please report to the Conference Room, 1101 N. Tancagua Street, Corpus Christi, Texas, at 10:00 a.m., Monday, May 02, 2005, for a formal investigation to develop facts and place your responsibility, if any, in connection with you allegedly failed to properly line switch, resulting in a run thru switch at Gregory, Texas, on April 17, 2005, at approximately 01:45 a.m., while working job RBXGR-15.

Engineer only. The proposed discipline for this offense is a Level 2, accordingly to the Upgrade Policy. You may contact MYO M. L. Long at 361-885-3250, for conference purposes.

You may arrange for witnesses and representatives, if desired, as permitted by your scheduled agreements."

PLB 6833
CASE NO. 53
AWARD NO. 53

After mutually agreed upon postponement, formal investigation was convened on May 10, 2005. After reading transcript of investigation, Carrier found Engineer Tindol responsible, as charged, for violating GCOR 8.2 – Position of Switches; and GCOR 8.15 – Switches Run Through. Upon a finding of responsibility, Engineer Tindol was assessed Level 2 discipline.

Discipline was timely appealed in accordance with labor agreement. Partisan parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During the investigation, Carrier expert witnesses testified that based on evidence at the scene - a twisted star stand and marks on the point indicating it had been run over by locomotive wheels - they determined that switch had, in fact, been run through.

Organization contended that the Conductor was responsible for lining the switches, and Engineer Tindol's movements were under the direction of the Conductor. For that reason, Engineer Tindol could not, reasonably, be held responsible.


OPINION OF THE BOARD:

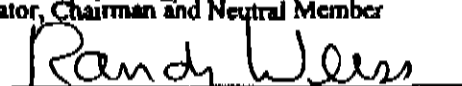
We have read the entire record and listened to oral arguments made by both parties. All the evidence of record indicates the person responsible for, and crewmember observed lining the switch was the Conductor. Engineer Tindol's movements, at all times pertinent to this dispute, were made under the Conductor's instruction. Engineer Tindol should, reasonably, have been able to rely on those instructions.

AWARD:

Claim sustained per findings above. Carrier is directed to remove discipline from Engineer Tindol's record and compensate him for lost earnings within thirty (30) days of execution of this award by majority members of this Board.


J. E. (Jim) Nesly - Arbitrator, Chairman and Neutral Member


Employee Member, Mr. Lee Pruitt
Brotherhood of Locomotive Engineers &
Trainmen


Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company

April 25, 2006