

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
AND  
BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN

STATEMENT OF CLAIM:

*“Request the removal of level 1 discipline from the record of Conductor M. Hatch 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 January 12, 2005, at approximately 9:00 p.m., Conductor M. Hatch was working as crewmember on Job YAK52-12 at Lake Charles, LA. Job YAK52-12 was primarily responsible for placing cars on tracks appropriate to predetermined destinations. Conductor Hatch observed the last car pulled from track number 508, then, proceeded to line switch on track number 3 when he slipped on a small patch of ice and fell.

By letter of January 21, 2005, Carrier issued Conductor Hatch a letter of notification, advising:

*“You are hereby instructed to report to the conference room, Highway 14, Lake Charles, LA on January 31, 2005 at 1:00 p.m. for a formal investigation to develop the facts and determine individual responsibility, if any, in connection with allegedly failing to use good judgment in carrying out your duties to avoid underfoot conditions that could cause slips, trips or falls. This alleged incident occurred while working as crewmember on the YAK52-12 at Lake Charles, LA on January 12, 2005 at approximately 9:00 p.m.”*

After mutually agreed upon postponement, formal investigation convened on March 3, 2005. After reading transcript of investigation, Carrier found Conductor Hatch responsible for failing to use good judgment. Upon a finding of responsibility, he was assessed discipline at Level 1.

Discipline was advanced - without resolution - to highest-level officer of appeal. This dispute comes, now, before this Board for final and binding adjudication.

During the investigation, Carrier Charging Officer testified there was, in fact, a slippery spot where the incident occurred. He, also, expressed puzzlement that Conductor Hatch would choose the path to track number three switch that lead over the icy patch rather than the safer route via the nearby rock road.

Organization took the position that Conductor Hatch was, merely, doing his job; he had no reason to believe, nor was he provided advice of hazardous, or unsafe conditions in the area in which the incident occurred. Organization maintained that the incident could not have, reasonably, been anticipated.

OPINION OF THE BOARD:


After carefully reading and thoughtfully considering the entire record of evidence – to include oral arguments made by both parties – we were compelled to find in favor of Conductor Hatch. Carrier offered very little in the way of credible evidence to confirm a connection between Conductor Hatch's behavior, and a violation of Carrier's rules. This Board and numerous others have consistently held that establishing that an accident occurred is insufficient evidence to prove responsibility.


In the case before us, Carrier fell well short of the threshold required to overcome its burden of proof. Accordingly, discipline cannot stand.

AWARD:

Claim sustained per findings above.

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

 4-25-06  
Employee Member, Mr. Lee Pruitt  
Brotherhood of Locomotive Engineers &  
Trainmen

  
Carrier Member, Mr. Randy Weiss  
Union Pacific Railroad Company  
April 25, 2006