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INLAND STEEL COMPANY

- and -

UNITED STEELWORKERS OF AMERICA

Local Union No. 1010

) Grievance No. 5-F-24

) Docket No. IH 224-219-10/9/57

) Arbitration No. 255

) Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
R. H. Werntz, Divisional Supervisor, Labor Relations
L. E. Kraay, Assistant Superintendent, #2 Open Hearth Dept.
M. Totlich, General Pit and Mould Yard Foreman,
#2 Open Hearth Department

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Wage Rate and Incentive Review
Joseph Wolanin, Acting Chairman, Grievance Committee
A. Gherra, Grievance Committeeman

R. Chavez, the grievant, a Switchman on the train crew assigned to the #87 Mould Yard Engine, was disciplined with two working days off (May 23 and May 24, 1957). His grievance notice filed on June 17, 1957 states that he was not responsible for the accident which preceded the imposition of the disciplinary penalty, that the Company's action was "unwarranted in view of the circumstances involved", and that by way of relief the discipline letter should be withdrawn from his personnel file and he should be compensated for loss of work.

The record of the case reflects a sharp conflict as to the details of the events that occurred on the morning of May 16, 1957 when the #87 Mould Yard Engine was derailed. The absence of the grievant from the hearing (he was on vacation) increased the difficulty of resolving some of the issues of fact. The account of events that follows constitutes my findings, as to the facts which are supported by the weight of the credible testimony.

On the morning of May 16, 1957 a drag of buggies with moulds was being removed from the #6 Pouring Stand in the No. 2 Open Hearth Department. The drag, as it proceeded north toward the Main Line, was pulled by #87 Engine. The engine faced the drag and proceeded north in reverse.

The drag cleared the #6 Pouring Stand Switch on the Main Line, came to rest, and was then pushed in a southerly direction toward the #23 Stripper. It is believed that the grievant attended to the switching operation at the #6 Pouring Stand Switch but as the drag proceeded south it is not known with certainty where he was located in relation to the drag. Presumably he was somewhere between the lead end of the drag and the engine but somewhat closer to the engine.

A Foreman stopped the progress of the drag while it was on the curve leading to the #23 Stripper and the drag was at this point again rerouted north to the #22 Stripper. The Union states that the Foreman who did the rerouting, Brewer, the Conductor, and Chavez were at the south end of the drag in a group. The Company places the Foreman at the south end of the drag on the other side of the tracks and out of the vision of Chavez; it places Brewer, the Conductor at the south end of the drag at a point where it is doubtful that he could have been seen by the Engineer at the north end of the drag; and it places the grievant at the side of the drag somewhat nearer the engine than the middle of the drag.

The Conductor at this stage signalled to proceed in a northerly direction, once more, toward the #22 Stripper. The drag, pulled by the reversed engine proceeded on the Main Line, past the #6 Pouring Stand Switch. When it reached the Water Plug Switch it left the Main Line (which apparently, was not intended) and ran along the Water Plug Track until the point where the Water Plug Spur runs into the Main Line. A drag of stools on the Water Plug Spur was fouling the Main Line. The engine ran into the stools and was derailed.

There is a conflict in the evidence as to where the grievant was positioned during this northerly movement. Rule 20 (Switching) of Safety Rules for No. 2 Open Hearth, Pit and Mould Yard Divisions (January, 1955) provides:

"All moving drags must be preceded by
either the switchman or the conductor.
* * *

The Conductor was at the south end of the drag. It is certain that the grievant did not precede the drag. The Company states that when the drag advanced north for the second time, R. Chavez "chose to ride the trailing footboard" [of the engine] rather than going to the lead footboard. It was under the impression that Chavez had admitted riding the trailing footboard during an investigation of the accident. The Union states that it has contended and the Company has not denied at the Third Step

"that Mr. Chavez was not even in a position to ride the engine at all, and that in fact, he did not and was not riding the footboard [any footboard] at the time the accident occurred."

That the grievant, as Switchman, was under a duty to precode the drag (or at least to be on the lead footboard of the engine) seems clear. Accordingly, unless the Union can show special circumstances why he was not where his duty required him to be, it must be assumed that his failure to discharge that duty was an important contributing cause of the derailment of the engine.

The Union states that he was not where he should have been because when the signal to proceed north to the #22 Stripper (in lieu of the #23 Stripper) was given by Brewer, the Conductor, he was at the south end of the drag and

"was not in a position to ride the head end
of the string and to protect the engine * * *"

This is in conflict with the Company's version, and was not presented by the Union as evidence but as contention. True, the Company had no direct evidence to present as to the grievant's actions and whereabouts, but the burden of showing that the grievant was at the place where he should have been under the Rules is on the grievant. It is regrettable that he was not present at the hearing for examination and cross-examination in the interest of the development of a more satisfactory record on this point.

In the present state of the record, accordingly, it is found that the grievant, wherever he may have been, was not where his duty required him to be; and except for the opinion expressed by the Union representative, no evidence was presented by him which would explain or justify why his duty was not discharged.

The Company argues, moreover, that if, as claimed by the Union, the grievant was not favorably situated at the time the drag started on its last northerly move, he could have, and it was his duty to, stop the drag by signalling the engineer until he could position himself properly for the protection of the engine. The Union demurs that it was not for the Switchman to countermand the order of the Conductor, the leader of the crew, with whom he was standing in a group when the go-ahead signal was given. However, this assumes a positioning of the grievant at that moment in time which was denied by the Company and as to which the Union presented no evidence whatsoever. Furthermore, there appears to be merit in the Company's contention that the grievant had not only the authority but the duty to signal the engineer to stop the train and to locate himself properly if its northerly movement caught him out of position.

Without contradiction the Union witnesses testified that the movement of drags, such as this, through the yards, is customarily at less than walking speed and not such as would prevent the grievant from positioning himself properly in relation thereto.

The Union pointed out that in reprimanding the Conductor for his contribution to the events leading up to the derailment, the Company stated that he "used poor judgment in permitting your [his] Crew to start off, knowing that the Switchman was not in position to protect the head end of the drag." The Company's answer to this alleged inconsistency in the facts as related is that the Conductor had an independent and separate duty which he failed to discharge properly; and that even if Chavez was not, at the start of the movement "in a position to protect the head of the drag", considering the usual speed of these drags, the distance traversed before the accident (probably four or five hundred feet) and the opportunities afforded to the grievant to stop the train properly to position himself, there was a separate and independent duty which he, as well as the Conductor failed to discharge and which contributed to the accident.

On the evidence presented to me at the arbitration hearing, the Company had good cause for its action and the penalty was not excessive.

AWARD

This grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: May 6, 1958