In the matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America
Local Union 1010

Grievance No. 26-K-12
Appeal No. 1191
Award No. 593

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
Robert H. Ayres, Assistant Director, Industrial Relations
W. H. Bacon, Sr., Assistant Director, Manpower Administration
T. R. Tikalsky, Assistant Superintendent, Labor Relations
D. H. White, Jr., Assistant Superintendent, Transportation
W. Webber, Trainmaster, Transportation Department
G. Gragidio, Yardmaster, Transportation Department
J. E. Blair, Labor Relations Representative
J. W. Ryan, Senior Labor Relations Representative

For the Union

Theodore J. Rogus, Staff Representative
Larry Shepherd, Grievant
Robert Fenters, Grievance Committeeman
Ray Brown, Conductor

The grievant is Larry K. Shepherd who questions whether the Company had cause for disciplining him on July 20, 1970. He was serving as Switchman on Engine No. 123 on the first turn. A disciplinary penalty of the loss of three working turns was imposed on him starting July 25. The ground was that he allowed his train to run through a switch that was lined against him causing his train on its reverse move to derail and to collide with another engine, resulting in extensive damage and narrowly avoiding injuries to a crew member on the other engine.

Grievant's train was proceeding over the "J" Lead. At the location in question there are two switches, only a few feet apart. One switches to the 14" Billet Dock Lead and the other to the Clockhouse Lead to the CC Yard. Train No. 105 had earlier moved into the 14" Billet Dock Lead to pick up some cars of billets. It was waiting for grievant's train, No. 123, to pass into the Clockhouse Lead to pick up a car in the CC Yard. It was necessary for grievant to throw both switches for his train to proceed by the Billet Dock Lead and into the Clockhouse Lead.

The Company alleges, however, that he threw only the second one, which would direct his train into the Clockhouse Lead to the CC Yard. The switch leading to the 14" Billet Dock Lead was allegedly not thrown by him, his train running through and forcing this switch on a trailing movement. When his train came back the engine and the cars all moved successfully into the "J" Lead until the rear trucks of the last car were forced by the switch to move into the 14" Billet Dock Lead, causing a derailment and the collision with Engine No. 105.

There is no dispute that to run a train through a switch aligned against it is negligence. Here we have a sharp issue of fact. The Company's contention has been set forth. Grievant, however, insists he threw both switches, and the Union contends that the accident occurred because of a defective switch or car.

The Trainmaster testified that immediately after the accident grievant told him only one of the two switches had been aligned against him, implying that he needed to throw only that one switch, not both. On July 23, however, when grievant brought his Assistant Grievance Committeeman in to meet with the Trainmaster, grievant insisted that he had thrown both switches. The Company disputed this, saying it was a revised version of what grievant had previously said, and added that the Assistant Grievance Committeeman acknowledged that grievant might have let his train run through the switch but that a three-day penalty was too severe.

In the earlier grievance steps the Union argued that the accident was due to either a defective switch or a defective car. In Step 4, however, the contention was that it was caused by the switch being picked. At the hearing the emphasis was again on defective equipment.

It seems that the Union witnesses were mistaken about the size of the car that was derailed. They described it as 65 feet in length and maintained that a car of such length is more prone to derailment than smaller cars. The Company represented, however, that the car is only of average size, 52 feet, 6 inches.

The equipment has not been found to be defective. The switch in question has remained in use without any changes or repairs, and with no untoward incident.

It is not possible to say with complete certainty what caused the accident. The Union has approached the problem by trying to raise doubts, relying on the requirement that the Company must sustain the burden of proving cause. The Company has meticulously developed its belief that the Billet Dock Lead switch was forced by grievant's train running through it on a trailing movement, leaving it as a trap subject to being sprung on the reverse passage. To the Union's argument that if so why were the engine and three cars able to go through successfully before the rear trucks of the last car were diverted, the Company's reply is that when such a trap is set the vibration or jarring of the cars passing over the switch provides the force for springing the trap.

It was interesting to hear that the parties tried to reconstruct the incident but that the switch did not spring in this trial. The Union main-

tains that this is in keeping with its theory, which it insists is supported by a letter from the company which manufactured the switch in question. This company wrote that: "After wheels have moved the switch points to the mid-throw position on a trailing movement, the #22 automatic switch stand takes over and completes the throw of the switch." It stressed, however, that the switch must be in accurate adjustment.

The fact remains that the accident occurred and that the uncontradicted evidence is that the switch required no repair or adjustment when inspected thereafter and that it continued in normal use without incident. If the point of the switch had been picked, as claimed by the Union, then the detailed analysis offered indicates that only one set of wheels would have followed the lead to the billet dock while the other set would have continued along the main line.

The weight of the credible evidence supports the finding that grievant threw only one switch, as contended by management. The Union did not offer as witnesses the crew members of Train No. 105 which was standing very close to the switches which grievant was required to throw. It was reported that they had seen exactly what happened and that grievant had been told about this. For the Company to bring in such witnesses to testify against a fellow-employee might have presented some practical difficulty but their failure to come in to support the grievant's version is of some significance in the circumstances of this case.

The Union has also placed a good deal of reliance on a procedural point which it deems to be of great importance. This is that paragraph 11 of the Switching Rules and Regulations was not observed by management, and that this invalidates any disciplinary action that was taken. This paragraph is:

> "When discipline is involved a copy stating the fact leading up to said discipline will be furnished the Grievance Committee Man. The Grievance Committee Man will also be allowed to sit with management to determine proper discipline."

The Union also cited Article 8, Section 2 of the collective bargaining agreement which declares:

> "An employee who is summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action shall be entitled to be accompanied by his Grievance Committeeman or Assistant Grievance Committeeman if he requests such representation, provided such representative is then available, and provided further that, if such representative is not then available, the employee's required attendance at such meeting shall be deferred only for such time during that shift as is

necessary to provide opportunity for him to secure the attendance of such representative."

In this connection, however, several facts are noteworthy. When grievant had his first discussion with the Trainmaster shortly after the accident, he had not been summoned to an office. It was an immediate investigation into the cause of the collision at some place other than the office of a supervisor. Grievant did not request the representation of his Grievance Committeeman or his Assistant Grievance Committeeman. On July 23rd grievant did request such a meeting, and he was accompanied by his Assistant Grievance Committeeman who argued about the severity of the three day penalty which was to start on July 25th. It would seem that there was substantial compliance with Article 8, Section 2, for all practical purposes.

The same is essentially true of Switching Rule 11, for the same reasons. It is difficult to see how grievant was prejudiced by the course followed by management, or how any meaningful violation of Rule 11 may be said to have occurred.

It was generally agreed at the hearing that over the years there has been an accepted practice to be flexible in the application of Rule 11, that in many instances the parties have seen fit to overlook technical or partial violations. In no instance in which an employee has requested Union representation has this been denied to him.

This situation is materially different from those involved in a series of three related awards at the Lorain-Cuyahoga Works of United States Steel Corporation, cited by the Union. (Grievance Nos. T-L69-256, T-L69-258, and T-L69-257. In those cases employees charged with theft of company property were confronted with circumstantial evidence in the Plant Superintendent's office and induced thereby to make damaging statements which led to their termination. They were not advised that they were entitled to have Union representation and there was none. The Union stressed the violation of the grievants' contractual, civil and constitutional rights, which was understandable considering the fact that criminal liability might be involved. Moreover, the meeting at which the statements were made was in an office of a supervisor and for the purpose of discussing possible disciplinary action. The facts are clearly distinguishable from those in our case in several material respects.

The substantive issue in our case is one of fact. It is conceded that forcing a train through a switch constitutes negligence and a violation of an accepted operating and safety rule. The imposition of a three day penalty for doing so, particularly when a foreseeable collision results is not excessive punishment.

AWARD

This grievance is denied.

David L. Cole

Dated: October 18, 1971

David L. Cole, Permanent Arbitrator

The chronology is as follows:

1.	Date of filing	August 26, 1970
2.	Dates of appeals and meetings	
	Step 2 Answer	September 16, 1970
	Step 3 Appeal	September 24, 1970
	Step 3 Hearing	October 14, 1970
	Step 4 Appeal	November 24, 1970
	Step 4 Hearings	December 22, 1970 January 5, 1971
3.	Date of appeal to arbitration	March 24, 1971
4.	Date of arbitration hearing	September 21, 1971
5.	Date of Award	October 18, 1971