

**PUBLIC LAW BOARD NO. 5263**

**Case No. 236  
Award No. 236**

**United Transportation Union** )  
 )  
 vs ) **PARTIES TO DISPUTE**  
 )  
**Union Pacific Railroad Company** )

**STATEMENT OF CLAIM**

Claim of Conductor J.L. Murty, EID 0218118, for the removal of Level 4 of the UPGRADE Progressive Discipline Policy - Behavior Modification Policy (30 days actual suspension) from his personal record, and he be compensated for any and all lost time including all time withheld from service and time spent attending an investigation held on November 17, 2006, when charged with an alleged responsibility "in connection with the report that at approximately 0545 hours on November 5, 2006, while employed as a Conductor on Train MCBPR/03, you allegedly left wheels of a car on the switch side of the yellow marks, approximately MP 201.4 on the Clinton Subdivision. You (sic) actions indicate possible violation of Rule 1.13 and 7.1, among others of the General Code of Operating Rules as adopted and modified by Union Pacific and Council Bluffs Superintendent Bulletin No. 41, effective January 1, 2006".

**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 November 24, 2006 the Carrier suspended the Claimant for 30 days. As a result of an investigation held on November 17, 2006 the Carrier found that the Claimant violated Rules 1.13 and 7.1 and Superintendent Bulletin No. A1 on November 5, 2006.

The Rules read as follows:

**1.13: Reporting and Complying with Instructions**

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

### 7.1: Switching Safely and Efficiently

While switching, employees must work safely and efficiently and avoid damage to contents of cars, equipment, structures, or other property.

Do not leave equipment standing where it will foul equipment on adjacent tracks or cause injury to employees riding on the side of a car or engine.

#### Council Bluffs Superintendent Bulletin No. 41

Service Unit engineering forces are in the process of painting/repainting clearance point markers on some tracks within the service unit. The clearance points are identified by 3 ft. yellow lines painted on the web of the rail. Additionally, some clearance points may be identified by installation of a 9" tall orange flexible plastic tube which is fastened to the top of a tie at the clearance point of the track.

These clearance point markers are being painted/installed to assist crew members in identifying clearance points of tracks. Leading car wheels cannot be left on the switch side of the yellow painted lines or on the switch side of the orange markers. The leading wheels of a car may be left within the 3 ft. painted area. If there is no paint, but a 9" orange flexible plastic tube is installed, the leading wheels must be clear of the orange tube. If both paint and the 9" orange tube are evident, the wheels may be within the 3 ft. painted line but cannot be on the switch side of the painted line.

A track which does not have the clearance point identified by paint or an orange tube does not relieve a crew from complying with the provisions of rule 7.1 for cars or engines left in that track.

The facts in this case are that Claimant's train set out car NATX230097 with other cars, which was later discovered to have its left wheels of the car past the yellow stripe on the web of the rail. The discovery of the car past the yellow paint was made after the crew had left town.

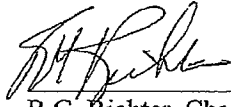
While the Carrier showed the left wheel of the car was beyond the yellow paint, there was not any evidence that the car was fouling any other track. Claimant testified it was nearly a car length from fouling another track, a fact not questioned. A Carrier Officer watched the set out of cars and found no exception to the set out. Carrier did not have this Officer testify at the hearing.

Claimant testified it was a dark cloudy night and that it had rained previous to making the set out.

The Carrier failed to prove the Claimant violated its rules. There was no evidence that Rule 7.1 was violated. Claimant's record will be cleared of all references to this incident and will be paid 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



\_\_\_\_\_  
Katherine Novak  
Carrier Member



\_\_\_\_\_  
Michael J. Reedy  
Employee Member

Dated 10/17/08