

**PUBLIC LAW BOARD NO. 7293**

**PARTIES ) SMART - TRANSPORTATION DIVISION  
TO )  
DISPUTE ) BNSF RAILWAY COMPANY**

**STATEMENT OF CLAIM:**

**Appeal on behalf of Memphis, Tennessee Yardmen G. A. Hall and D. W. Wilson for removal of a Level S Thirty (30) Day Record Suspension and One (1) Year Review Period and a Ten (10) Day Record Suspension, respectively, from their personal records and pay for all time lost as the result of a joint investigation held on September 9, 2010. (Organization File D-1925; Carrier File 55-11-0020)**

**FINDINGS:**

**The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.**

**Discipline here on appeal was assessed the Claimants following a joint hearing that was conducted on September 9, 2010 in a Carrier determination that testimony and exhibits show that the Claimants failed to protect a hump shoving movement in the Memphis Terminal while working as crew members on Job MEM374 on July 30, 2010. Claimant Hall was held to have violated General Code of Operating Rule (GCOR) 6.5.1, Remote Control Movement, and GCOR 6.27, Movement at Restricted Speed; Claimant Wilson to have violated General Notice (GN) No, 1028, Special Instructions-Memphis Terminal.**

**In part pertinent the above mentioned rules read as follows:**

**GCOR 6.5.1**

**Remote control movements are considered shoving movements, except when the remote control operator controlling the movement is riding the leading engine in the direction of movement. Before initiating movement, the remote control operator or a crew member must be in position to visually observe the direction the equipment moves.**

**GCOR 6.27**

**When required to move at restricted speed, movement must be made at a speed that allows stopping within half the range of vision short of:**

- **Train.**
- **Engine.**
- **Railroad car.**
- **Men or equipment fouling the track.**
- **Stop signal.**
- **or**
- **Derail or switch lined improperly.**

**GN 1028**

**6. POINT PROTECTION:** When an RCO job is making a shove movement greater than 10 car lengths in distance, the employee who is protecting the point of that movement must have control. Control must be “pitched” to the employee on the point prior to the movement being initiated.

**In overall study of the record the Board finds unpersuasive contentions of Claimant Hall and argument of the Organization made on his behalf that he had positioned himself in the bowl of the yard where he was able to visually observe the direction or point of the RCO pull-back move. Testimony of the observations of Road Foreman of Engines and photographs of record presented at the hearing evidence that Claimant Hall, the operator of the RCO, was not so located as to observe the point of a shove of the engines and cars that was well in excess of the 10-car maximum.**

**As concerns Claimant Wilson, when asked at the hearing where he was located at the time of the shove movement so as to visually observe the direction of the move, he said, “just sitting” in the shanty. Claimant Wilson was then asked: “Based on where you were at where you were sitting in the shanty, were you in a position to visually observe the direction of the movement of the 374?” The reply of Claimant Wilson to this question was:**

**Actually no, but when I saw the engines come to the top of the hill, I thought we were finished. I thought we were finished. I didn't know. I was not aware that he had a car, had cars attached. I thought we were finished. I thought he was lining engines.**

Claimant Wilson was thereafter asked as to whether he was in compliance with the rules regarding this shove movement incident; the response of the Claimant was: "Not at that time."

In regard to Organization procedural argument, the Board finds that they are either without agreement support of record or not sufficient for it to be held that the Claimants should have been provided benefit of Alternative Handling as opposed to a disciplinary hearing or that they had been denied benefit of a fair and impartial hearing.

It being evident that the Carrier has met a necessary burden of proof in support of the charge of record, the claim to set discipline aside will be denied.

**AWARD:**

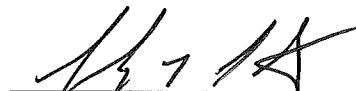
Claim denied.



Robert E. Peterson  
Chair & Neutral Member



Andrea N, Smith  
Carrier Member



J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: 9/26/17