

In the Matter of the Arbitration Between

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INLAND STEEL COMPANY )

AND )

UNITED STEELWORKERS OF AMERICA )  
AND ITS LOCAL UNION 1010 )  
\_\_\_\_\_ )

Grievance No. 26-N-17

Appeal No. 1326

Award No. 722

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 19, 1982. Pre-hearing briefs were submitted on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:

Mr. R. B. Castle, Coordinator, Labor Relations

Mr. R. T. Larson, Arbitration Coordinator, Labor Relations

Mr. L. W. Harding, Superintendent, Transportation Department

Mr. A. G. Duvall, Assistant Superintendent, Transportation Department

Mr. W. Webber, Trainmaster, Transportation Department

Mr. J. Gray, Yardmaster, Transportation Department

Mr. M. S. Riffle, Coordinator, Labor Relations

Mr. R. V. Cayia, Senior Representative, Labor Relations

Mr. J. A. Nielsen, Representative, Labor Relations

Mr. G. Crosby, Director, Employee Relations, INRYCO

Mr. J. Dunlap, Manager, Industrial Relations, INRYCO

For the Union:

Mr. Thomas L. Barrett, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Ken Gillie, Griever

Mr. Anthony Lahaie, Grievant

Arbitrator:

Mr. Bert L. Iuskin

BACKGROUND

On March 30, 1979, the engine crew assigned to locomotive engine No. 114 consisted of A. Lahaie, conductor, S. Cummings, engineer, and J. Gaglio, switchman. At approximately 1:45 P.M. engine No. 114 (with no attached cars) left the engine/pit area adjacent to the E yard moving forward in a southerly direction toward the northbound main track. The engine then crossed over to the southbound main track moving in reverse and heading in a northerly direction.

Track 1 E runs parallel with the southbound main track and is adjacent thereto. Engine No. 114, while heading north in reverse on a southbound main track thereafter became involved in a collision with the last two cars of a string of 28 cars being pushed by engine No. 128. The collision occurred at a point where a cross-over junction of the southbound main and the 1 E tracks meet at switch No. 698. Two gondola cars (the point cars of the 28 cars being pushed by engine No. 128) suffered damage and were partially derailed. There was damage to engine No. 114 that required repairs.

At the conclusion of the shift a departmental investigation was convened. That session was attended by Assistant Superintendent Duvall and Yard Master Gray, as well as the three members of the crew of engine No. 114. The three members of the crew of engine No. 114 were subsequently disciplined by a five-day suspension from employment (five working turns). Each of the three crew members filed a separate grievance.

A procedural defense was raised when a contention was advanced that the grievants (Lahaie, Cummings and Gaglio) had requested and had been denied Union representation at the time that the investigation was conducted. In addition thereto the Union contended that proper cause did not exist for the imposition of disciplinary measures against the three grievants. Lahaie had filed Grievance No. 26-N-17; Gaglio had filed Grievance No. 26-N-18; and Cummings had filed Grievance No. 26-N-19. At a later point in the grievance procedure the parties agreed to treat the grievances filed by Gaglio and Cummings as "like grievances" pursuant to the provisions of Article 6, Section 6, of the August 1, 1977, Collective Bargaining Agreement. The parties reached an agreement and understanding that the award in Grievance No. 26-N-17 would be applied to the grievances filed by Gaglio and Cummings. j

The Company's basic contention was that the three crew members had failed to follow the right-of-way procedures outlined in Transportation Department Safety Rule No. 25. It was the Company's contention that the failure to follow the procedure set forth in that rule resulted in the collision for which all three members of the crew should be held equally responsible.

The issue arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

#### DISCUSSION

Transportation Department Safety Rule No. 25 is hereinafter set forth as follows:

"25 Line-ups

"'Line-up' is defined as the routing a train is intending to take in its next series of moves. Line-up is established by lining switches in the direction of travel. Line-up is also established by normal routing; for instance, crossovers should always be lined back for the main since the main is normal line-up.

"Several rules of procedure are important in connection with line-ups.

"1. Engine crews must establish line-up by lining switches for their route and must protect this line-up by signaling other crews of their intention to use it.

"2. Engine crews must not break into line-ups unless:

"(a) They are sure there is not other crew in the area that would use the line-up.

"(b) If another crew is in the area a contact is made with them and the second crew is to be told that the line-up is to be changed.

"In the absence of any contact between crews the right-of-way always belongs to the crew that has the line-up.

"3. Crossovers and turnouts from mains should always be lined back for the main so the normal line-up of the main is retained."

The Union contended that engine No. 114 was traveling approximately fifteen miles per hour and that the string of cars being pushed by engine No. 128 was stationary and not moving while engine No. 114 approached switch No. 698. The Union conceded that the switch (No. 698) was set against engine No. 114 and the engineer contended that he saw no movement of the cars being pushed by engine No. 128 until the lead gondola of the string of cars being pushed by engine No. 128 lurched forward and struck engine No. 114. The engineer contended that as his engine (No. 114) approached the switch he was not traveling "too fast for conditions." He contended that if the string of cars had not lurched forward, engine No. 114 could have entered the switch with ample clearance and it could have moved on to track 1 E without incident.

The engineer's version of what occurred was substantiated in part by the conductor (Lahaie) and by the switchman (Gaglio). The switchman (Gaglio) testified that in his opinion engine No. 114 was moving at about five miles per hour, and he testified that he was positive and certain that the cars being pushed by engine No. 128 were not in motion when engine No. 114 reached the switch.

In the opinion of the arbitrator, the evidence would support a conclusion and finding that the crew of engine No. 114 failed to follow safety rule No. 25. The crew members, therefore, must accept primary responsibility for the collision that occurred between engine No. 114 and the point cars of the string of cars being pushed by engine No. 128. The five-turn suspension from employment could not be considered to have been unreasonable or unjustified.

For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 722

Grievance No. 26-N-17

The Company had just and proper cause for imposing a five-turn suspension from employment against Anthony Lahaie as a result of an incident which had occurred on March 30, 1979. The grievance is hereby denied.

Bert L. Luckin  
ARBITRATOR

August 16, 1982

The procedure followed by the crew of engine No. 114 was a clear violation of the procedure set forth in safety rule No. 25. The violation of that rule was the proximate cause of the property damage to the engine and to two gondola cars with a further possibility of an injury fatal to a member of the crew of engine No. 114. That action justified the imposition of discipline.

The Union contended that the Company committed a procedural violation when it denied the crew of engine No. 114 Union representational rights at the initial investigation. The evidence will not support a conclusion or finding that any member of the crew asked for the presence of a Union representative in the initial interview, and the record will not support a conclusion or finding that Union representation was denied to any member of the crew at any time during the course of the investigation.

The Union has contended that, since the Company carries the burden of proof in this case, it was incumbent upon the Company to have brought in the crew of engine No. 128 and to have questioned that crew concerning any possible failure on their part to follow operating procedures that might have alerted the crew of engine No. 114 to the possibility that engine No. 128 would be moving on that same track. It should be noted that the Company offered the testimony of two eye witnesses and the testimony of other Company officials who conducted the investigation and who viewed the damage to engine No. 114 and to the gondola cars that were struck by engine No. 114. The Company was under no obligation to offer the testimony of the crew of engine No. 128.

Company witnesses testified that they observed the impact and could testify with certainty that the lead gondola of the string of cars being pushed by engine No. 128 was struck by the rear of engine No. 114 causing damage to the side of two gondola cars, a partial derailment of one of the cars, and damage to the side and rear of engine No. 114 at the point where the impact occurred.

The testimony of the yardmaster and the trainmaster concerning the area of impact was completely supported by evidence concerning the repairs made to engine No. 114 and the repairs made to the gondola car that was initially struck by engine No. 114.

The evidence concerning the condition of the switch is undisputed. Switch 698 was set against engine No. 114 and the evidence would conclusively indicate that engine No. 128 was in movement and, under those conditions, safety rule No. 25 (Line-ups) would require that engine No. 128 would have the right-of-way and the absolute right to continue on track 1 E since the switch had been set in favor of engine No. 128 and against engine No. 114.

The testimony offered by Union witnesses is sufficiently contradictory in nature to justify a conclusion that the eye-witness testimony offered by the yardmaster and the trainmaster was a far more accurate description of the incident than was the description offered by the three members of the crew of engine No. 114. The only reasonable conclusion that can be drawn from all of the evidence in the record is that engine No. 114 was moving at about fifteen miles per hour and did not stop until impact occurred at the switch. The engine should have been stopped before it reached the switch and, if that procedure had been followed, the accident could not have occurred since it would have become immediately apparent that switch 698 was clearly lined-up for movement by engine No. 128 and was set against engine No. 114.

The grievant (Lahaie) testified that he was the conductor for engine No. 114 and he was primarily responsible for the movement and operation of engine No. 114. He testified that switch 698 was set against engine No. 114 but that there was sufficient clearance for the engine to reach the switch, have the switch thrown, and to move engine No. 114 into track 1 E without incident if the string of cars being pushed by engine No. 128 had not lurched forward just as engine No. 114 reached the switch. Lahaie contended that the responsibility for alerting and warning the crew of engine No. 114 of the possibility that engine No. 128 would be moving, rested with the switchman crew member of engine No. 128. He testified that that person (having set the switch and having lined up for movement by engine No. 128) should have waited at the switch, prepared to alert and warn any other engine approaching that switch that engine No. 128 might be moving and might be moving into the track.

Lahaie testified that engine No. 114 did not stop until impact had been made with the lead gondola of the string of cars being pushed by engine No. 128. He testified that the accident could have had fatal consequences since Switchman Gaglio was at the bottom of the step where the impact occurred and that he scrambled up the steps and tripped just as the impact occurred. He testified that Gaglio could have been crushed if he had not been alert and moved quickly.

The Company offered testimony to the effect that the trainmaster (Webber) and yardmaster (Gray) were both in the tower looking directly at the movement of the two trains. Those witnesses testified that, in their opinion, engine No. 114 was being operated "too fast for conditions." Both witnesses testified that engine No. 114 did not stop at the switch prior to the point of impact and both witnesses testified that they were positive and certain that engine No. 128 was pushing the 28 empty cars at a slow rate of speed on track 1 E at a point in time when switch 698 was set for movement by engine No. 128 and was set against engine No. 114.

CHRONOLOGY

Grievance No. 26-N-17

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|-----------------------|---|
| Grievance filed       | June 1, 1979  |
| Step 3 hearing        | February 6, 1980  |
| Step 3 minutes        | March 24, 1980  |
| Step 4 appeal         | March 31, 1980  |
| Step 4 hearings       | October 7, 1980<br>October 16, 1980<br>November 6, 1981<br>November 25, 1981<br>December 10, 1981<br>December 17, 1981<br>January 7, 1982 |
| Step 4 minutes        | July 7, 1982  |
| Appeal to Arbitration | July 8, 1982  |
| Arbitration hearing   | July 19, 1982   |
| Award issued          | August 16, 1982   |