

A train crew operating over a territory that had sustained heavy rainfall is issued a Procedure FF (Flash flood) between Mileposts 12 and 18 on their Track Warrant for movement. Such requires that the crew comply with GCOR Rule 6.21-Precautions Against Unusual Conditions, which reads as follows:

In unusually heavy rain, storm, or high water, trains and engines must approach bridges, culverts, and other potentially hazardous points prepared to stop. If they cannot proceed safely, they must stop until it is safe to resume movement.

At about 2:30 a.m., in the vicinity of Milepost 15, the train was operating at 23 mph (track speed 40 mph), the locomotive's dynamic braking system was engaged, and the crew was slowing to be prepared to stop short of the bridge at Milepost 16.5 (a potentially hazardous point as contemplated by Rule 6.21). Suddenly the train traversed a severe dip in the track. The Engineer immediately put the train's braking system into emergency. A subsequent inspection of the train revealed that 13 cars were derailed. The cause appeared to be compromised trackage, where the rail and ties were intact, but the underlying roadbed had been eroded.

The Organization considered the incident unavoidable and contended that the crew had done nothing wrong as the washed-out track location did not concern a bridge, culvert, or other "potentially hazardous point" as contemplated by Rule 6.21.

The Carrier argued the crew was careless and negligent, in violation of GCOR Rule 1.6, in failing to operate their train at a speed that would allow stopping short of the washout.

On May 1, 2024, Claimant Jones was working as a conductor in the Carrier's Springfield Yard. Shortly after Claimant Jones tied up, a manager allegedly found a cut of 26 cars which had handbrakes applied on only two of the cars. The manager reviewed records and determined that Claimant Jones was the last person to handle those cars. Carrier rules regarding securement of equipment applicable to the Springfield Yard required at least five handbrakes to be applied to that many unattended cars.

Consequently, by letter dated May 8, 2024, Claimant Jones was notified to attend an investigation to determine the facts and his possible responsibility in connection with the improperly secured cars. The notice scheduled the hearing for May 11, 2024.

On May 9, 2024, the Carrier issued a postponement letter, setting the hearing for May 15, 2024. The hearing was held that day. Claimant Jones was found to be in violation of the cited rules, and he was issued a 30-day suspension.

The applicable agreement provides in part:

“Investigations will be held within ten (10) days of the time the railroad has sufficient knowledge of the incident to be investigated.”

The agreement contains other time frames for issuing discipline and claim handling, and it provides:

“The time limits set forth above may be extended by mutual agreement.”

The Organization argues in its submission that the May 15 hearing was untimely in that it was not held within 10 days of the manager's knowledge of the incident to be investigated, and that the claim should be sustained on that basis alone. It notes that the objection was raised by Claimant's representative during the hearing, but that the objection was overruled by the Hearing Officer. The Organization also states that there is no indication that the Carrier sought an agreement to postpone the hearing.

The Carrier replies that postponements of hearings are standard practice, and that there is no showing that Claimant or the Organization was prejudiced by the short postponement. It also argues that the issue of whether an agreement had been reached to postpone the hearing was not fully developed during the hearing, and that it is possible there had been informal discussion about a postponement which would satisfy the extension provision.

How do you address those arguments?

Does it make any difference if the representative did not raise an objection on that point during the hearing?

The Claimant operated a fully loaded auto train measuring 9,868 feet. The Claimant attempted to slow the train from over 50 mph as he approached Flora, MS. He performed a running release at a speed he testified was 21 mph, based on his speedometer. The train, of a length which the Claimant had never operated before, went into emergency, causing damage. The locomotive's event recorder data indicated the brakes were released at 19 mph. The Train Separation Report filled out by the Claimant indicated a speed range of 21 to 16 mph, but exact details were unclear. The Claimant reported he had concerns about the accuracy of the speedometer.

The Carrier noticed the Claimant to report to an investigation to determine his responsibility concerning the damage to the train resulting from this incident. The Carrier's Rule 309 states the minimum allowable speed for a running release on a train over 9,000 feet is 20 mph.

The Investigation was postponed for three days by the Carrier. The Organization's request for a 10-day postponement to prepare the Claimant's defense was denied. The hearing officer denied requests for information, including event recorder data from the second locomotive, both before and during the hearing.

The download shows a difference of 2 mph (21 to 19mph) in one second, and does not show with certainty just when the Claimant started the running release, or just when pressure changed in the brakes. The Supervisor, unfamiliar with the downloaded document, could not confirm its accuracy. The Organization's multiple requests to verify the accuracy of the locomotive download data were denied. The Hearing Officer instead filled in gaps in the Supervisor's testimony with his own opinion. The Hearing Officer also denied the Organization's requests to have documentation furnished concerning maintenance to, or calibration of, the speed recorder of the lead locomotive. The Claimant testified there was a problem with his speedometer and that he followed all rules and procedures to the best of his ability. The Hearing Officer did not permit the Organization's representative to ask certain questions of the Claimant and other witnesses, including how and why the Claimant may have done things differently.

As a result of the Investigation, the Hearing Officer found the Claimant guilty of violating Rule 309.

After an Investigation, the Claimant was found guilty of siphoning diesel fuel from Carrier Locomotive 252 into a tank on his personal flatbed truck and leaving the Carrier's property with the siphoned fuel. As a result, he was dismissed from the Carrier's service. The Organization appealed, contending the discipline assessment was arbitrary and capricious. The Carrier maintained that there was substantial evidence adduced during the Investigation supporting that the Claimant engaged in the charged misconduct and the discipline assessment was commensurate with the rule violation. The case was placed in line to be adjudicated by the Board.

Subsequent to the issuance of discipline in this matter, and prior to the case being presented to the Board, the Claimant faced criminal charges. He was charged with theft in excess of \$500 — a Class 3 Felony — in connection with the siphoned fuel incident. The public court record revealed that the Claimant admitted guilt to the theft charge and was accepted into the County's First Offender Program, a program designed to provide first-time, non-violent felony offenders with an opportunity to prevent a conviction from being permanently entered on their record. As a condition of this program, the Claimant was required to write a letter to the Carrier confessing to and apologizing for the fuel theft.

On the day of the Arbitration Hearing in this matter, it was determined that although the parties and the Referee had copies of the Investigation transcript, the Board was not provided a copy of the transcript. Rule 1(d) of the Board's June 23, 2003, Uniform Rules of Procedure provides: "(d) In discipline cases, the Investigation Transcript shall be furnished to the Board as an Exhibit to the Carrier's Submission."

How would you rule?