

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United
(States and Canada
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. improperly placed an entry of censure on the personal record of Havelock Shop Carman Helper W. H. Bell as a result of formal investigation held on March 6, 1978.
2. That the Burlington Northern, Inc. be ordered to remove entry of censure from the aforesaid carman helper's personal record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

An investigation was held on March 6, 1978 to determine Claimant's responsibility in connection with his alleged failure to comply with proper instructions per Burlington Northern Safety Rules 65(a) and 66(c) on February 24, 1978. These Rules are quoted hereinafter for ready reference:

Rule 65 Employees must:

"(a) Expect the movement of train, engines, cars, or other moveable equipment at any time, on any track, in either direction."

Rule 66 Employees must not:

"(c) Rely on others to warn them of the approach of moving equipment, but instead, be alert for their own safety."

Claimant was later apprised by letter, dated March 22, 1978 that an entry of censure was placed in his personal record for his failure to comply with the aforementioned rules and this disposition was appealed.

In reviewing this case, we agree with Carrier that the notice of investigation was sufficiently worded to permit Claimant the opportunity to prepare an intelligent and coherent defense. We find no procedural irregularities in the record. Claimant testified that he was familiar with Safety Rules 65(a) and 66(c). He testified that he did not stop the trackmobile at the crossing and as a result, it was struck by a moving freight car. We recognize, of course, that accidents are sometimes caused by factors other than the negligence of the operator. But we find in this instance, no mitigative evidence to support Claimant's assertions that the lighting at the crossing and the trackmobile's mechanical condition contributed to the accident. When the sequence of events is objectively examined, we find no evidence that he could not have stopped the vehicle in a timely and safe fashion.

Correlatively, we are mindful of Claimant's unblemished work record, but it does not counterbalance and negate the import of the charged specifications herein. Safety is a matter than cannot be considered lightly in the railroad industry. The penalty of censure was not unreasonable and, in fact, under the circumstances of this case was mild, when the dimensions of the accident are considered. The trackmobile was caught on the freight car and dragged between 150 and 175 feet. Surely this was not an insignificant event. It could have resulted in Claimant's death or physical and mental impairment. In Second Division Award 7941 involving an analogous fact situation, we held in pertinent part:

"The finding of the hearing officers that the Claimant was guilty of the offense charged was supported by substantive evidence of probative value. Considering the seriousness of the violation, in that it could easily lead to loss of life, we do not find the fourteen (14) day suspension to excessive."

We find the rationale of this holding on point with this case and as such, we are compelled to deny the claim.

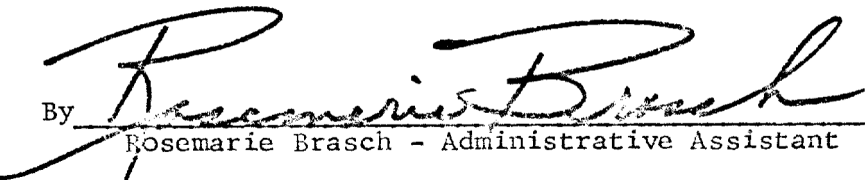
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of November, 1980.