

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Burlington Northern Railroad

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Communication District Lineman N. Bentele was unjustly suspended from service of the Burlington Northern Railroad for a period of five (5) days as the result of an investigation held on January 27, 1982.
2. That the Burlington Northern failed to provide a complete and accurate hearing transcript and the investigation held on January 27, 1982 was not a fair and impartial investigation.

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 employes involved in this dispute are respectively carrier and employes 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.

The Claimant was employed as a Communications District Lineman at the Carrier's facility located at Quincy, Missouri. As a result of an investigation that was held on January 27, 1982, the Claimant was suspended from service for five (5) days for "failure to operate track car prepared to stop", and striking a fellow employee on November 24, 1981.

After carefully examining the record, the Board concludes that the Carrier failed to meet its burden of proving any rule violations by the Claimant which would warrant discipline. The record discloses that the employee who was struck did not notice or hear the motor car operated by the Claimant on November 24, 1981 because of a noisy compressor motor. He stepped into the path of the motor car leaving the Claimant no time to stop or avoid the accident. The Claimant cannot be said to be negligent or responsible for the accident. Had lookouts been posted by his Supervisor or had his Supervisor stopped the Claimant and warned the employees that the Claimant would be operating the motor car across the bridge, the accident in question would not have occurred.

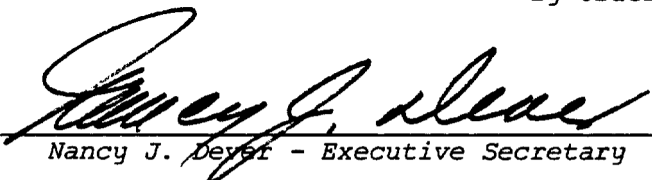
Accordingly, the Carrier failed to carry its burden of proving that the Claimant violated Rule 62 of the Rules of the Maintenance of Way Department of the Operating Department which provides in relevant part that "Track cars *** must approach persons *** where the view is obscured" and be "prepared to stop".

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1985.