

PUBLIC LAW BOARD NO. 3193

Case No. 8

Award No. 8

Parties	United Transportation Union
to	and
Dispute	Burlington Northern Railroad Company
Statement of Claim	Claim of Switch Foreman W. B. Hale that he be paid for all lost time from November 10, 1980 through December 9, 1980 and that all mention of this incident be stricken from his record.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 16, 1982, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Hale, who, at the time of this incident giving rise to the instant claim, had prior service with the Milwaukee Railroad, was a relatively new employee at Carrier's Tacoma, Washington switching facilities. On October 12, 1980, Claimant was working as Foreman on the 8 AM West Lead Yard assignment.

At approximately 1:30 PM Claimant's crew placed an empty Chip car, BN585340, on the west end of Track No. 29. The crew's next move was to shove a cut of four cars into Track No. 41. BN585340, however, was not placed on Track No. 29 to clear the lead switch, resulting in BN585340 being sideswiped by four cars being shoved into Track No. 41. Two of

the cars contained hazardous material (chlorine gas and caustic soda). No spillage of lading occurred and a near-catastrophe was averted.

Claimant received notification to attend an investigation on October 16, 1960, resulting in a determination that Claimant was in violation of Rules 808 and 808(E) of Consolidated Code of Operating Rules as well as Item 7 of Special Instructions No. 3. The applicable schedule rules, in pertinent part, read:

808. Employees performing switching must do so efficiently and in a manner which will avoid personal injury, damage to contents of cars, equipment, structures or other property.

808(E). When switching or placing cars, they must be left where they will fully clear passing cars on adjacent tracks and where they will not cause injury to employees riding on the side of cars.

7. Hazardous Materials

Holders of the Consolidated Code of Operating Rules must have BN Form 15784, "Handling Placarded Cars In Railroad Transportation," in their possession and be familiar with its contents.

All carloads of chlorine and anhydrous ammonia must not be cut off while in motion and no car(s) moving under its own momentum shall be allowed to strike these cars, nor shall such cars be coupled to with more force than is necessary to complete the coupling. Employees must be informed of the presence of these cars and instructed to handle them in accordance with the above requirements.

* * *

Organization seeks to convince the Board on appeal that Claimant complied with the mandates of the rules and special instructions, arguing that Carrier failed to make a convincing case.

However, a fair reading of the transcript fails to convince the Board of anything more than Claimant Hale's testimony that he was in a position approximately 1 to 2 car lengths away from BN585340, knew that he was handling hazardous material, had a clear opportunity to observe

clearance points, and began a shove without properly determining that the move could be made safely. In fact, the move was not made safely, a catastrophe of enormous proportions was narrowly avoided and Claimant was assessed 30 days.

Carrier argues to the Board that the 30-day assessment, in the circumstances of this instance, was a moderate measure of discipline and appropriate for the seriousness of the consequence that might of occurred given the locale of the yard and the substances involved.

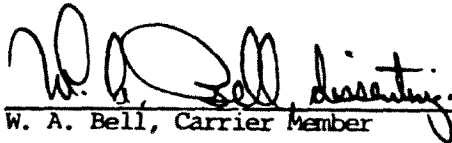
Organization responds to the issue of measure of discipline by pointing to Award 15, Case 15, of Public Law Board No. 24 (Weston) where the Neutral denied the claim of a Yardperson who was found responsible for a sideswipe involving 2 cars, one of chlorine and one of caustic soda. In that case Carrier imposed a 5-day suspension which was upheld by the reviewing authority.

In the circumstances of this case, a collision occurred involving chlorine gas and caustic soda. Claimant, an experienced railroader (although of short duration on this property) who had an otherwise clean record, was found to be culpable for the sideswipe. While we agree with Carrier that a catastrophe was narrowly avoided, the point of the exercise was to assure compliance with the rules. Organization is arguing disparate discipline in that Carrier in one instance imposed a 5-day suspension and in this instance arbitrarily imposed a 30-day suspension. We find nothing in the record that would distinguish the two cases. Are we to assume that there is one measure of discipline in the event that rules are violated in a heavily populated area, but another standard of discipline in the event that rules are violated in a more rural or remote area? Clearly, that is not the intent of the

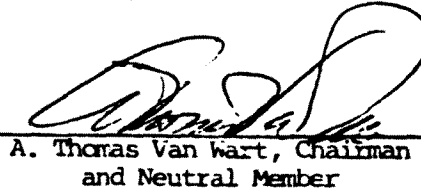
exercise of uniform and fair discipline. Accordingly, we are persuaded that absent distinguishing factors, that the discipline in this case should be modified to a 5-day suspension, Claimant be made whole for the difference in time, and his record so adjusted. We do not address the myriad of awards offered by Organization as further support for its argument as they involve actions taken to adjust discipline for the reasons found therein to be appropriate by the reviewing authority as distinguished from the levy of discipline made by the Carrier involving the same or similar circumstances which was upheld by the Board.

AWARD: Claim sustained as per findings.

ORDER: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


W. A. Bell, Carrier Member


D. E. Wegler, Employee Member


A. Thomas Van Wart, Chairman
and Neutral Member

Dated: July 10, 1987