

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CASE NO. 14

AWARD NO. 14

Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "1. The fifteen (15) day actual suspension of the Foreman J. L. Sovay violated the effective Agreement when assessing discipline August 30, 1979, on unproven charges. (System File S-P-195C).
2. That Foreman J. S. Sovay be returned to service and paid for all time lost for violation referred to in part one (1)."

On July 23, 1979, Claimant James J. Sovay was assigned as a Relief Section Foreman, working near Kanasket, Washington on the 4th Subdivision of the Pacific Division. At approximately

12:45 p.m. he was operating a motor car in which he and others were proceeding eastward, when he collideded with a fire patrol motor car heading west. The two cars continued east for approximately three rail lengths and then collided with another westward headed motor car. A fire resulted from this second impact which destroyed all three cars; however none of the employees involved suffered serious injury.

An investigation of the accident was held on August 3, 1979, and Claimant attended, accompanied by a duly designated representative of the Organization. By letter dated August 30, 1979, the Carrier notified Claimant that he had been found to be in violation of Maintenance of Way Rule 62 on July 23, 1979, and that he was assessed fifteen (15) days actual suspension from service.

Rule 62 states:

"Track cars and on-track equipment must approach persons, animals, all road crossings, equipment on adjacent tracks, frogs, switches, derails, tunnels, station platforms, curves and points where the view is obstructed, prepared to stop."

The testimony offered at the investigation indicates that Claimant, proceeding east in his motor car, saw the fire patrol motor car headed west, from a distance of about 20 rail lengths or about 780 feet. Claimant was traveling about 10 miles per hour, while the fire patrol car was traveling at about 15 miles per hour. Claimant pulled on the brake and stepped on the clutch, and at the time of the collision, his motor car was down to 4 to 5 miles per hour. Claimant's car traveled 4 to 4-1/2 rails

(156 to 175) feet from the time he saw the fire patrol car to the time of the impact. However, the record indicates that a faulty rail lubricator spread too much oil on the eastern portion of the tracks, affecting the two cars coming from that direction. The driver of the second car testified his car traveled 15 or 16 rails (585 to 624 feet) from the time he saw Claimant and the time of collision, and that he could not stop his car because of excessive oil on the tracks. Similarly, the driver of the third car stated that he also was unable to stop his car because of excessive oil on the tracks.

There is nothing in the record to persuade this Board that the Claimant did not act reasonably or quickly under the circumstances. The key point on which the Carrier relied is that while Claimant pulled on the brake and stepped on the clutch, he admitted that he did not disengage the gear apparatus prior to the collision. As Claimant explained at the investigation, he was watching the other motor car to see if it was going to stop, and when it was apparent that an accident would occur

"...it happened extremely quick, and when I got to the point where I knew we were going to collide, then I was concerned about making sure the men got off the motor car."

The Carrier has not met its burden to show by substantial evidence that the Claimant violated Rule 62. Accordingly, the claim is sustained.

AWARD: Claim sustained.

F. H. Funk

F. H. Funk,
Organization Member

W. Hodynsky
Carrier Member

Richard R. Kasher

Richard R. Kasher,
Chairman and Neutral Member

DEC 20 1982