

PUBLIC LAW BOARD NO. 3460

Award No. 5
Case No. 5

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) the dismissal of Machine Operator G. W. Wright, September 18, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) claimant be reinstated with all rights unimpaired and compensated at his applicable rate for all time lost commencing August 25, 1980."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was a machine operator working on a tie gang. On August 22, 1980, the tie gang tied up at Orion Junction on the old Rock Island Maine Line. Claimant had been operating the ballast regulator with an apprentice who he was breaking in. The ballast regulator was the last piece of equipment to be placed in the clear that night. According to the record of the investigation, claimant drained the pressure and then put the pressure back up to 90 pounds and set the brakes before leaving the equipment. On the following evening, August 23, the ballast regulator rolled free and fouled the BN main line. At about 10:30 that night it was struck by a train consisting of 136 cars and a serious collision occurred. As a result of this collision, the ballast regulator was approximately totally demolished and the total property damage from the collision exceeded \$60,000. There were no personal injuries sustained.

Carrier asserts that claimant violated Rules 869 and 871 of the Operating Rules.

Rule 869 provides:

"When machine operators leave any power driven lift or carrying equipment, the main clutch must be disengaged, they must be sure that the fork bucket, or blade, is placed on the ground so that no one can be injured by accidental movement of the release lever."

Rule 871 provides:

"When leaving or before working on roadway machines and work equipment that might accidentally be released or moved, operator must secure safety links in position or properly block equipment."

Carrier asserts that claimant admitted to having violated the above rules and that his actions on the night before were the proximate cause for the collision which occurred. Carrier states that claimant failed to take the necessary steps to secure the equipment properly on the grade on which it was parked. His steps could have been either lowering the plow, dropping the wings or blocking the wheels of the equipment. He did none of these things. His lack of diligence cannot be excused by the absence of fail safety brakes or an emergency brake on the equipment. Furthermore, even though Carrier acknowledges that the plow hydraulic equipment was damaged, it could have been used or other means should have been used to secure the ballast regulator. Furthermore, according to Carrier, there was no evidence of vandalism or any other outside factor causing the accident other than claimant's failures.

Petitioner insists that claimant was not culpable for the particular incident involved. He set the brakes and handled the equipment in the customary manner. He had never been instructed by supervisors to use any other means of securing the equipment. Further, he could not drop the plow since the hydraulic system was damaged and, indeed, parts had been ordered for repair of that equipment. The Organization alleges that the claimant is quite correct in his testimony that the incident was undoubtedly caused by vandalism. This allegation was never refuted by Carrier, according to the Organization. Petitioner insists that the Carrier had failed to meet its burden of proof in its case and hence the discipline was totally unwarranted.

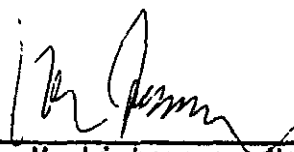
As the Board views it, claimant did not diligently carry out the functions which an experienced operator should have been aware of. Even though the plow was damaged it could have been dropped in order to secure the equipment. Had Petitioner decided that this would have been awkward in terms of the following morning, he could have blocked the wheels or dropped the wings in order to secure the ballast regulator. Merely setting the brakes on an incline, in the absence of either fail safe brakes or an automatic derail device, was inadequate. Claimant was experienced enough to have known this. This is particularly apparent in view of the incident just two days prior to the accident when the brakes failed in the same position. Thus there can be no doubt but that claimant was responsible for the accident which occurred. Furthermore, obviously there is no evidence to support the hypothesis that vandalism was the cause of the accident. As an additional point, however, it must be noted that Carrier bears some tangential culpability in that the supervisors should have been aware of the methods used in parking the equipment. There was never any admonition to claimant with respect to his technique. On balance and in view of the entire circumstances involved in this matter, it is the Board's view that although claimant was guilty of the charges, the nature of the discipline imposed was excessive. Permanent dismissal under all the circumstances was arbitrary and unwarranted. For that reason, claimant will be returned to service with all rights unimpaired but without compensation for time lost. His period out of service shall be considered to have been a disciplinary layoff.

AWARD

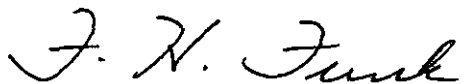
Claim sustained in part. Claimant shall be returned to service with all rights unimpaired but without compensation for time lost.

ORDER

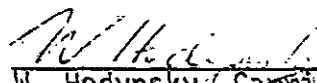
Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



F. H. Funk, Employee Member



W. Hodynsky, Carrier Member

St. Paul, Minnesota

September 30, 1984