

PUBLIC LAW BOARD NUMBER 3566

Award Number: 9 and 10

Case Number: 9 and 10

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claims on behalf of Machine Operators G.L. Traylor and R.L. Crenshaw, requesting that they be paid for all time lost and that the charges be removed from their records.

FINDINGS:

On May 2, 1983, tamper MT-026, operated by Claimant Crenshaw, collided with tamper MJ-016, operated by Claimant Traylor near Ravia, Oklahoma.

A hearing was held in order to investigate the circumstances surrounding the collision. On the basis of the evidence adduced during the investigation, Carrier determined that Claimants had violated Rules 65 and 81 of Carrier's Rules of the Maintenance of Way Department. Claimant Traylor was assessed an actual suspension of 15 days, and Claimant Crenshaw was assessed an actual suspension of 10 days. The Organization filed claims protesting Carrier's actions and requesting that Carrier compensate Claimants for all time lost and remove the charges from their work records. The claims were denied at all levels of appeal on the property, and the Organization then submitted the matter to this

Board for resolution.

The issue to be decided in this dispute is whether Claimants were suspended for just cause; and if not, what should the remedy be.

Claimant Crenshaw was charged with violation of Carrier's Rule 65, which reads in part as follows:

Safe breaking distance of not less than 150 feet must be maintained between...equipment while traveling to or from work locations. Preceding track car or on-track equipment must not be stopped, except in emergency, until the operator of following equipment has been signaled and signal acknowledged.

The wording of the quoted portion of the Rule shows that it was meant to apply to two pieces of on-track equipment operating in close proximity and in visual range of one another where a sudden, unannounced stop by the leading vehicle would be likely to cause an accident. The Rule is inapplicable to the instant Crenshaw stopped his tamper, the two vehicles were not in visual range of one another.

Second, the two vehicles were so widely separated at the time Claimant Crenshaw stopped his tamper that there was no danger of collision. Third, Foreman Bilby testified that when he first saw Claimant Traylor approaching, his tamper was "about 13 poles away from us." Claimant Crenshaw obviously did not stop his tamper in a spot where the following operator would come upon it unexpectedly.

For the reasons stated above, it is the opinion of this Board that Claimant Crenshaw did not violate Rule 65 as charged, and that he was therefore suspended without just and reasonable cause.

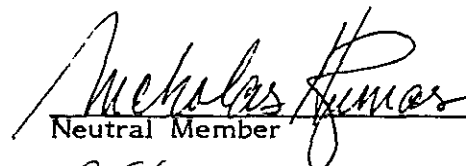
Claimant Traylor was charged with violation of Rule 81. That Rule reads as follows:

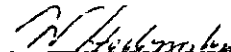
Track cars and on-track equipment must be operated at all times at a safe speed, giving consideration to grade, load, rail and weather conditions and controlling speed accordingly.

The record shows that Claimant Crenshaw's tamper was visible to Claimant Traylor from a distance of approximately 13 poles, that the accident occurred on a slight downgrade and that it had been raining and the rails were wet. The record shows further that the brakes were in good condition and operating properly, and that they had been "big-holed" prior to the accident. Since the brakes were operating properly, the only conclusion can be that Claimant Traylor either approached at an excessive rate of speed or did not begin braking in time to stop safely under the existing conditions. Accordingly, it must be concluded that Claimant Traylor violated Rule 81 as charged.

AWARD:

Claim of Claimant Traylor denied. Claim of Claimant Crenshaw sustained. Carrier shall reimburse Claimant Crenshaw for all time lost as a result of his suspension, and shall remove all evidence of the discipline from his work record.


Neutral Member

 DISSENTING VOTE
Carrier Member


Organization Member

Date:

