

SEP 18 89

Case No. 32

~~PARTIES TO DISPUTE~~

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM:
Brotherhood that:

"Claim of the System Committee of the

1. The dismissal of Grinder Operator E.R. Speidel for alleged 'failure to perform your duties in a safe and alert manner in connection with damage sustained to Grinder BNX 37-0248...' was excessive and without just and sufficient cause. (System File Weld/Gr DMWA 84-6-14A)

2. That Claimant E.R. Speidel shall be reinstated to service with seniority and all other benefits unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD: This dispute concerns the dismissal assessed by Carrier against Claimant, Grinder Operator E.R. Speidel. Specifically, Claimant was found guilty of his responsibility for damage to Grinder BNX 37-0208 when it was struck by a train while he was assigned as a look out.

The Organization appealed Carrier's dismissal of the Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that dismissal of Claimant is excessive. It maintains that Claimant was performing his duties to the best of his ability under the circumstances. In this case, he was watching for approaching trains and assisting Welder Zeigler at the same time. Additionally, it argues that his ability to detect approaching trains is limited both visually (1/4 to 1/2 mile

range) and audibly (sound of grinder machine). The Organization further maintains that similar incidents have occurred in the past on the property. However, it contends that these incidents are caused because the welding gangs are not issued radios or other protection such as a track permit. It maintains that the lack of proper equipment supplied by the Carrier contributes to such incidents as in this case. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, contends that the accident was caused by Claimant for which he admits guilt at the hearing. It further maintains that the testimony of Welder Zeigler must be considered. He was standing next to Claimant operating the grinder with ear plugs in place and first noticed the train approaching. The Carrier argues that there was no apparent obstruction or vision limitation that would have prevented Claimant from seeing the approaching train. It asserts that Claimant's carelessness and lack of responsibility clearly caused the damage to the grinder, and could have resulted in serious injury or death to two employees. Accordingly, it asks that the claim be denied. Further, Carrier notes that the Claimant was offered reinstatement to his position on a leniency basis without pay for time lost. That offer was rejected by the Organization. Accordingly, Carrier asserts should a determination be made by the Board that the discipline was improper, the proper remedy is to monetarily place Claimant in the position that he would have been had he not been disciplined.

A review of the record evidence convinces the Board that Claimant's discharge was excessive. While the evidence does support Carrier's determination of guilt, discharge is unreasonable in this case. Under these particular circumstances, a suspension from February 21, 1984 until his reinstatement, forthwith, is justified. This suspension serves as notice to Claimant of the seriousness of the incident and the fundamental employee obligation to comply with safety rules. Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in this Opinion.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

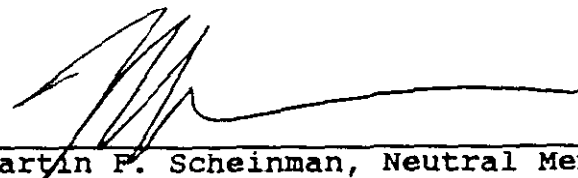
That the Agreement was violated.

AWARD:

Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/5/89