

PUBLIC LAW BOARD NO. 4104

Case No. 71

PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The fifteen (15) days of suspension imposed upon Truck Driver H.E. Dickey for alleged failure to perform his duties in a safe manner was excessive and unwarranted.

2. Truck Driver H.E. Dickey's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This dispute concerns the fifteen day suspension assessed by Carrier against Claimant, Truck Driver H.E. Dickey. Specifically, Claimant was found guilty for his responsibility of damage to Company Vehicle No. 3859 when it struck a railroad overpass.

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

The Organization contends that a fifteen day suspension is improper. It asserts that the person responsible for the operation of the boom attachment was Foreman Booten, while Claimant was the truck driver. It argues that Claimant was arranging the kegs of spikes in the bed of the truck and when he was completed, he entered the driver's side to eat lunch. It avers that he was not aware that the boom had not been returned to its normal position nor was it his responsibility to do so. In the Organization's view, Claimant was not responsible for the operation of the boom and therefore, cannot be held to blame for the incident that

occurred on February 18, 1986. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, contends that it was justified in suspending Claimant. It asserts that Claimant testified at the hearing that he always checks the equipment on the truck, but failed to do so on February 18, 1986. Carrier maintains that Claimant understood the Safety Rules applicable, and stated he did in fact violate such rules. It states that Claimant, as a truck driver, is responsible to ensure that all equipment is secured in a safe manner before operating his vehicle. In the Carrier's view, the damage to the truck was caused by Claimant's failure to perform his duties. Accordingly, it asks that the claim be denied.

We have carefully reviewed the transcript of the investigation. The evidence does support Carrier's determination of guilt for Claimant's responsibility in the incident on February 18, 1986. Claimant testified that he is aware of the Safety Rules and in fact admitted that he did violate them. He further testified that he always checks the equipment on the truck which is his responsibility. His failure to do so on February 18, 1986 resulted in \$8,100 damage to the truck. As an employee with thirty-three years of service, he is aware of his responsibilities and the consequences of his failure to abide by such. Accordingly, there is no proper basis for the Board to interfere with the discipline imposed. We will deny the claim.

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;

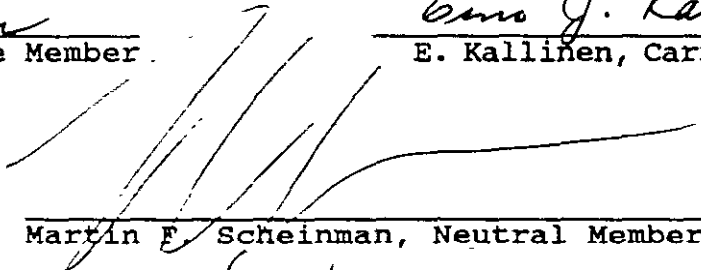
That the Public Law Board No. 4101 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

5/28/97