

PUBLIC LAW BOARD NO. 4104

Case No. 75

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 five (5) days suspension imposed upon J.G. Jackson for alleged violation of Rules 550 and 39 was unwarranted, without just and sufficient cause, on the basis of unproven charges, and in violation of the Agreement.

2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: This dispute concerns the five day suspension assessed by Carrier against Claimant, B.B. Foreman/Pilot V.G. Jackson. Specifically, Claimant was found guilty of his responsibility concerning \$5,861.20 damage to a weed sprayer truck and \$250.00 to the switch engine.

As a result of the incident, an investigation was held on June 19, 1986. On July 3, 1986, Claimant was assessed discipline of five days suspension from July 5, 1986 to July 9, 1986.

The Organization appealed the suspension of 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 the collision in this dispute was not the result of Claimant's irresponsibility in his duties. It argues that both Switch Foreman Cubrich and Switchman Barrett were aware that the spray truck was in the area; however, neither informed the train's engineer. It asserts that Mr. Cubrich gave

Engineer Abbott instructions to perform a backing movement which resulted in the collision with the Spray Truck. In the Organization's view, the train crew members neglected to exercise care in the performance of their duties. In addition, it argues that the yardmaster failed to notify the train crew of the spray truck's presence in the vicinity. As such, it emphasizes that Claimant was not responsible for the train engineer's failure to observe his presence at the Fire Road grade crossing. Thus, the Organization reasons that the claim should be sustained.

Carrier, on the other hand, contends that the Organization is attempting to shift blame of Claimant to other employees. It asserts that Claimant testified that he did not provide proper protection for the truck and did not call the switch engine to advise the engineer of his intentions. Carrier argues that Claimant's failure to do so resulted in the accident and subsequent damage. Carrier maintains that the discipline imposed is appropriate for the shared responsibility in the accident. Accordingly, it asks that the claim be denied.

We have reviewed the record of evidence and find that Claimant was appropriately found guilty as charged. Due to his failure to follow required safety rules and procedures, an accident occurred resulting in substantial damage to Carrier property. However, due to the circumstances involved, we find that a five day suspension is excessive considering his work record and the responsibility of others involved. We will therefore reduce his discipline to a three day suspension.

Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in the 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 in part.

AWARD: Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

5/28/91