

PUBLIC LAW BOARD NO. 4244

Award No. 250

Case No. 257

File No. 150-13C2-9916.EXP

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to issue a Level S suspension for thirty (30) days from service was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held at 9:00 a.m. on February 2, 2000 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

The claimant, track foreman D. Balandran, was operating a Carrier vehicle westbound on highway 60 near Culebra, New Mexico on November 9, 1999. While en route to his destination, the claimant reached down in order to change the channel on the radio inside his vehicle to the appropriate frequency utilized by the Carrier in the area surrounding Culebra. According to the claimant, the "right wheel caught the shoulder of the road" while he changed the radio frequency. As a result, the claimant's vehicle overturned on the embankment after skidding approximately ninety feet. The Carrier estimates that it will cost \$196,000 to replace the vehicle operated by the claimant at the time of the accident.

The Carrier instructed the claimant to attend an investigation in order to develop the facts and determine his responsibility, if any, in connection with his accident while driving a

company vehicle in Culebra, New Mexico on November 9, 1999. As a result of the formal investigation conducted on February 2, 2000, the Carrier issued the claimant a thirty-day level S suspension for violating Rules 1.1, 1.1.2 and 1.3.1 of the Maintenance of Way Operating Rules (MWOR). Additionally, the Carrier placed the claimant on probation for a period of three years. The Board finds that the discipline assessed the claimant must be upheld, and the claim denied for the following reasons.

The following rules of the MWOR are relevant in this case. Rule 1.1 of the MWOR entitled "Safety," provides as follows: "Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment. Rule 1.1.2 of the MWOR entitled "Alert and Attentive," provides as follows: "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury. Rule 1.3.1 of the MWOR entitled "Rules, Regulations, and Instructions," provides as follows:

Safety Rules. Employees must have a copy of, be familiar with, and comply with all safety rules issued in a separate book or in another form.


Maintenance or Way Operating Rules. Employees governed by these rules must have a current copy they can refer to while on duty.


The record indicates that the road conditions were good and the weather was clear on the date of the claimant's accident. Additionally, the evidence of record reveals that the claimant was familiar with the particular road on which the accident occurred. Nonetheless, an accident resulted when the claimant momentarily took his eyes off the road while he changed


the channel on the radio inside his vehicle. Based upon the facts and circumstances presented, the Board determines that this accident was the result of the claimant's inattentiveness and negligence. Thus, the Board finds that the Carrier has satisfied its burden of proof that the claimant violated Rule 1.1.2 of the MWOR because the claimant was not alert and attentive when he performed his duties. Additionally, the Board finds that the claimant did not comply with the Carrier's safety rules provided in Rules 1.1 and 1.3.1 of the MWOR, and a review of his prior record reveals two disciplinary actions involving vehicles in a three year period prior to this latest motor vehicle accident. Accordingly, the claim must be denied

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 9th day of June, 2000.