
Case No. 259

Organization File No. 240-13I3-992.CLM

[illegible]

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

1. The Carrier violated the current Agreement when dismissing Mr. J. L. Kaye from service for his alleged violation of Rule S-1.1, S-1.5.1 and S-1.5.2 of the Maintenance of Way Safety Rules when he allegedly failed to be in compliance with good housekeeping rules on March 16, 1999 at Gallup, New Mexico.
2. As a consequence of the Carrier's violation referred to above, Mr. Kaye shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

Public Law Board No. 4244
Award No. 252
Case No. 259
Carrier File No. 14-99-0091
Organization File No. 240-1313-992.CLM

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

On March 16, 1999, the claimant, J. L. Kaye, was assigned to work as a truck driver on section vehicle BNSF 94971. At approximately 11:45 a.m., the claimant tied down a rail in the bed of his truck. The claimant then proceeded to the rear of his truck, at which time he tripped and fell to the ground. As a result, the claimant sustained injuries to his right shoulder, leg and thumb. The claimant properly notified his supervisor that he had sustained a personal injury, and subsequently received medical treatment at the local hospital.

The Carrier instructed the claimant to attend an investigation in order to determine the facts and his responsibility, if any, in connection with his failure to comply with good housekeeping rules, which resulted in the claimant sustaining a personal injury at Gallup, New

Mexico on March 16, 1999. As a result of the formal investigation conducted on April 6, 1999, the Carrier dismissed the claimant from service for violating Rules S-1.1, S-1.5.1 and S-1.5.2 of the Maintenance of Way Safety Rules. For the following reasons, the Board finds that the discipline assessed the claimant was harsh and excessive under the circumstances presented.

The following rules are relevant to the Board's decision in this case. Rule S-1.5.1 entitled "Housekeeping," provides as follows: "Keep work locations, vehicles and the inside and outside of buildings clean and orderly at all times." Rule S-1.5.2 entitled "Inspection," provides as follows:

Inspect your work location and vehicles for any condition that might cause injury, property damage or interference with service. If you find such a condition, take necessary action to protect against the hazards or discontinue activities in the area or with the vehicle. Promptly tag where appropriate and report any defects or hazards to your supervisor or person in charge.

At the investigation, roadmaster A. C. Richardson testified that the grievant's vehicle was "cluttered and disorganized." Roadmaster Richardson further stated that the grievant acknowledged the fact that his vehicle was disorganized. Rule S-1.5.1 provides that the claimant must keep his vehicle clean and orderly at all times. The Board finds that the bed of the claimant's truck was somewhat disorganized at the time the claimant sustained his personal injury. Additionally, the Board finds that the claimant may have been able to store some of the

tools which were in the truck bed inside tool boxes located on the sides of the truck. Such storage would have resulted in a more organized vehicle. Based upon these findings, the Board determines that the Carrier has satisfied its burden of proof that the claimant violated Rule S-1.5.1.

The record indicates that the claimant tripped and fell on the hydraulic hoses connected to the Matweld power plant which was being transported in the bed of the grievant's truck. Rule S-1.5.2 provides that the claimant must inspect his vehicle for any condition that might cause injury, property damage or interference with service. The record indicates that there was little room for movement in the bed of the claimant's truck due to the size of the Matweld power plant which was being transported by the claimant. The grievant admitted that he violated Rule S-1.5.2, and the Board finds that the claimant failed to conduct a reasonable inspection of his vehicle for conditions that might cause injury, property damage or interference with service. Thus, the Board concludes that the Carrier has presented sufficient evidence which would indicate that the claimant violated Rule S-1.5.2.

The Carrier's discipline policy provides, in part, as follows:

PART II: Serious Offenses

This part of the Policy describes the corrective action prescribed for a serious offense. A serious offense is not sufficient by itself to warrant dismissal, but substantial suspension and retraining may be appropriate. **Furthermore, if the employee commits two serious offenses within a specified period, not to exceed three years, he will be subject to dismissal.** For purposes of

illustration, the following rule violations are considered serious (this is not an exhaustive list):

- Failure to perform duties causing or contributing to a serious derailment, damage to rolling stock, track equipment or shop machinery, or injury to others.
- Any other serious violation of General Code of Operating Rules, Maintenance of Way Rules, Safety Rules or General Instructions issued to employees.

An employee who commits a serious offense is assigned a Level S.

Dismissal- second serious offense within probationary period

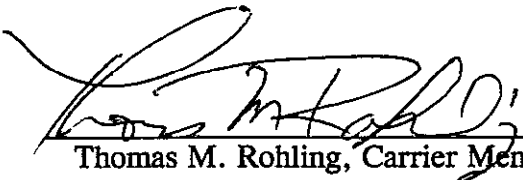
In a case where an employee has committed a second serious offense within an assigned probationary period, he will be subject to dismissal.

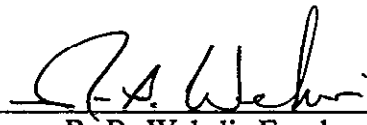
The claimant's personal record reveals that he was issued a Level S suspension on January 30, 1998, for failing to follow instructions which resulted in a personal injury. In this case, however, the Board finds that the Carrier has presented no evidence which would cause this Board to conclude that the instant rule violation by the claimant rose to the level of a serious offense. Moreover, the claimant's failure to perform his duties as outlined above did not cause or contribute to the injury of others. There was no other evidence presented which would support a classification of the claimant's violations as a serious offense under the discipline policy. Thus, the Board concludes that the discipline assessed the claimant was excessive under the circumstances presented.

The Board further notes that F. DuBoise, the claimant's foreman, was charged with the same rule violations as the claimant in the instant case. However, foreman DuBoise accepted the conditions of a waiver and received a fifteen-day suspension and a fifteen-day deferred suspension despite his lack of a sterling prior work record with the Carrier. In addition, the Carrier failed to prove or even mention Rule S-1.1 at the investigation, and there is no evidence to support a finding that claimant violated that rule. The Board finds that based upon the foregoing facts and circumstances of this case, including consideration of the claimant's prior record, a thirty-day suspension is warranted. Accordingly, the claim is sustained, in part, as set forth in the Award.

AWARD

The claim is sustained, in part, as follows. The claimant is hereby reinstated to the service of the Carrier. The discipline assessed the claimant is reduced to a thirty-day suspension without pay. The claimant shall receive back pay from such date after the period of suspension for which it can be medically certified he was capable of returning to work until the date of his reinstatement. The Carrier is to comply with the terms of this Award within thirty (30) days from the date of issuance.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 31st day of July, 2000.