

Joseph Lazar, Referee

AWARD NO. 8
CASE NO. 8

<u>PARTIES</u>)	<u>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES</u>
<u>TO</u>)	<u>vs</u>
<u>DISPUTE</u>)	<u>BURLINGTON NORTHERN RAILROAD COMPANY</u>

STATEMENT
OF CLAIM:

Claim of J. N. McCluskey for payment for all time lost account suspended from the Carrier's service from December 2, 1986, through December 10, 1986, and that the charge be removed from his service record.

FINDINGS:

The Board, on consideration of the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated April 10, 1987, that it has jurisdiction of the parties and the subject matter, and that, pursuant to the Agreement dated April 10, 1987, oral hearing by the parties, including Claimant, has been duly waived.

Under date of December 15, 1986, Claimant J. N. McCluskey received notice to: "Report to Division Office, 5280 Shelby Drive, Memphis, Tennessee, Tuesday, January 6, 1987, at 10:00 am for investigation to develop the facts and determine your responsibility, if any, in connection with the alleged failure on December 1, 1986, at approximately 9:25 am of two on-track machines, a double broom and a ballast regulator, machines assigned to Surfacing Gang S-4-24 under your direct supervision to properly move through the interlocking limits at Jasper, Alabama, Burlington Northern milepost 693.7 and Norfolk Southern mile post 86.4 NA, thereby causing Norfolk Southern Train Number 552 to nearly collide with one of these machines."

On December 15, 1986, Claimant was advised that: "Effective December 11, 1986, you are reinstated to your former position as Assistant Foreman on the Burlington Northern Railroad, with all rights intact, but without pay for time lost since your dismissal on December 2, 1986."

The transcript shows the following statement describing the incident giving rise to the investigation accorded to Claimant:

"To Whom it May Concern:

On December 1, 1986, approximately 9:25 AM Southern Train 552, eastbound at Jasper, Alabama, Mile Post 86.4 NA, nearly struck BN equipment at BN Interchange, Jasper, Alabama.

No. 552 reported near miss with two BN track machines. Engineer reported 1st Machine 05-0052 (Double Broom) had crossed in front of engine and was missed only five (5) feet by train. Another machine BNX 6-0228 Regulator was north of Southern main line within interlocking limits. No. 552 had clear signal at Jasper.

Road Foreman of Engines D. J. Orazine arrived on scene shortly after incident and talked to Roadmaster Bruce Lane about incident. Both called Machine Operators Bob Highfill of 05-0052 and Jimmy Young of BNX 6-0228 into office and found that no one had operated time release on interlocking at Jasper. Operator Highfill stated he heard approaching train and then crossed interlocking in front of Southern train. Operator Young heard train but stopped north of Southern main line as train was three (3) car lengths from crossing.

No BN track people had attempted to operate time release to set signals against Southern trains. Tape from interlocking machine shows:

- 9:16 AM Southern approach occupied by Southern Train No. 552.
- 9:24 AM BN interlocking occupied momentarily then cleared for Southern train.
- 9:26 AM Southern Train occupied interlocking on clear signal.
- 9:26 10/AM BN O.S. Circuit occupied by BN track machine.
- 9:27 AM Southern approach cleared.
- 9:30 AM Southern cleared interlocking.
- 9:33 AM BN O.S. Circuit cleared." (Tr., pp. 7-8).

The transcript of investigation shows the following testimony of Operator J.L. Young, member of Claimant's gang under Claimant's supervision:

- "Q. Did you operate the release on the Interlocker?
A. I didn't know nothing about it.
- Q. You didn't operate the release on it?
A. No.
- Q. Tell me this, did Mr. Griggs or Mr. McCluskey ever tell you that you had to operate the release on that Interlocker?
A. Didn't nobody tell me nothing.
- Q. They never did talk to you about that, huh?
A. No." (Tr., p. 30).

"Q. How far was the train from the diamond when you saw it?

A. The train was about three or four car lengths - about three car lengths.

Q. So you stop, and the train went on by.

A. Right.

Q. And where was Mr. Highfill at this time?

A. He was already across.

Q. He was already across. Alright. Uh, to your knowledge, where was Mr. McCluskey?

A. He was trying to get around - come around to flag.

Q. Was he there when you got there?

A. No, he wasn't there when I got there.

Q. Was he there when the train went by?

A. Well, he just about made it, I reckon, if I ain't mistaken. And he flagged me on across." (Tr., p. 29).

"Q. Did he (Claimant McCluskey) flag the Interlocker that day you were day when the train approached?

A. Well, he was going around - he was coming around to us.

Q. Was he there?

A. He say he got blocked. No he wasn't there.

Q. Alright, he wasn't there then.

A. Right." (Tr., p. 31).

The transcript of investigation shows the following testimony of Claimant McCluskey:

"Q. Alright, now, so what happened? Your track and Time run out?

A. Yes sir. We, uh, that morning we'd been helping Mr. Griggs with the curves, marking off curves, and we were up on the tamper there, and he tried to get extension on Track and Time, and the Dispatcher wouldn't give us no more and told us we had to get in the clear. And that morning we had that Ballast Regulator out ahead. I told Mr. Griggs he was probably about five or six miles up towards Townley and is out of radio range. I said we need to make arrangements to get him back to the gang to get in the clear. I said I need to go around and see if I can get ahold of him while we're finishing tamping and get him back so we can all go to the hole.

Q. He didn't have a radio, then?

A. He had one. A small packset.

Q. Did you try to call him?

A. Yes sir.

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Q. He didn't respond.

A. No sir.

Q. Alright, so you went to get the Lead Regulator.

A. Right.

Q. Alright. That was further on towards Memphis, is that correct?

A. That's correct.

Q. So when you cleared up, you had to clear up back towards Birmingham, is that correct?

A. Right.

Q. Alright. So you went to get the Tamper. Did you get the Tamper?

A. I got the Regulator.

Q. Did you get it?

A. Yes sir.

Q. And, tell me how you did when you got it.

A. Alright, sir. When I left the uh, had the truck out there that morning, the gang had already come on out and I had the truck when I got the Regulator out of the hole for us to use that morning, and I had to lock up all the switches behind me back at Jasper, and I come on out toward where the gang had started work at. Couldn't get no time, I told Mr. Griggs the situation, uh, got out of the machine, went to the truck, was blocked in with the District Gang there, we were coming through a crossing around MP 690. And uh, we had to get the crossing back in, so I helped them there for a few minutes til they could move their truck out of the way so I could go get the Regulator. And we had a Backhoe working with us - the District Gang did - and we had sent him on around ahead of us on our Track and Time on the track. And the District Gang Foreman said if ya'll would, do not give your time up until we make sure that this Backhoe is in the clear. Well, I informed the Foreman that I was headed north that way to get a Ballast Regulator and that I would run by there and check on them to make sure that they were in the clear. And as I left, that's the two things I had on my mind then, and I went ahead and got them. And the next thing I knew I was headed back to Jasper. I was coming into Jasper there and was coming up to the Depot at Jasper toward the Interlocker, and I was blocked by a Southern Local, which had pulled in on the IC Interchange there to clear for this Extra 552 East. And I sat there a few minutes and I seen he wasn't doing any switching or anything, so I went around town and come in from the other side of the Depot. And by the time I got there, all the machines were already in the clear, and the next thing I knew, this Road Foreman had come up asking me about some machines that like to got hit." (Tr., pp. 36-37).

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- Q. If I understood Mr. Young's testimony right, you know, he didn't understand he was supposed to be running a release.
- A. Well, if you run the release on it, you know, - well, I was there. I have been at the interlocker, but at times I cannot be there. So I feel like they have to comply by the rules just the same as we are.
- Q. Did you tell them that that's what they were supposed to be doing?
- A. At one point, yes sir. Cause at the times we'd go across the Interlocker I'd be there. I would flag the Interlocker.
- Q. And you told Mr. Young specifically, correct?
- A. Yes sir.
- Q. And Mr. Highfill - you told him specifically.
- A. Right.
- Q. How about Mr. Harrison?
- A. Mr. Harrison - at times if I was there, yes sir.
- Q. Did you tell him that he had to run a release?
- A. Run - well, running a release is flagging the crossing.
- Q. How about Mr. Hubbard?
- A. Mr. Hubbard, he was always right in line up there.
- Q. Did you tell him?
- A. No sir.
- Q. Alright. So you told some of the Operators, but not all of the Operators.
- A. Right.
- Q. And you told Mr. Young to do that.
- A. Right.
- Q. Alright. On December 1, 1986, you weren't present when the Double Broom Operator, Mr. Highfill, went across the diamond, is that correct?
- A. That's correct.
- Q. Where were you at that time?
- A. I was getting the front Regulator back to the gang to get him across.
- Q. How far away would you have been?
- A. Oh, eight miles or better.
- Q. So you weren't in the vicinity of the so-called incident or near miss, and you didn't see that.
- A. No, sir." (Tr., pp. 36-39).

- "Q. Alright. Generally speaking. Generally when you put the machines over the Interlocker - the Automatic Interlocker at Jasper, how did you protect them?
- A. I'd go work the release on the side of the CTC building there. Comply with the instructions in it.
- Q. But you didn't do that on December 1?
- A. No sir.
- Q. Alright. Who would have been responsible to do that?
- A. Whoever's on the head end.
- Q. Well, who would that have been, then?
- A. Well, Mr. Griggs." (Tr., p. 40).

The evidence of record clearly establishes that Claimant received verbal instruction to run the release on the Interlocker, knew the location of the machines on his gang and the location of his Foreman, had not informed all of his Operators of the proper procedures to get through the Interlocker, and acknowledged that he would, in the future, comply with release procedures. Conceivably, if Claimant had not been blocked from timely flagging, the near-miss incident might not have occurred. This would not, however, relieve Claimant from his responsibilities as Assistant Foreman. There is substantial evidence of record to support the Carrier's determination of suspension from December 2, 1986 through December 10, 1986. Considering the gravity of the offense, with possible death and injury to members of Claimant's gang, the discipline was not excessive.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: December 18, 1987