

PUBLIC LAW BOARD NO. 4340

Joseph Lazar, Referee

AWARD NO. 9
CASE NO. 9

PARTIES)
 TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
 VS.
 BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT
OF CLAIM:

Claim of J. L. Young for payment for all time lost account
suspended from the Carrier's service from December 2, 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 January 14, 1987, Claimant J. L. Young was
advised that "as the result of the investigation conducted in Memphis, Ten-
nessee on January 6, 1987 by General Roadmaster R. P. Wiese, your 8-day sus-
pension from service by Roadmaster Lang on Dec. 2, 1986 is upheld.

"Said investigation showed clear violation of Rules 70(a) and 70(b) of the
Burlington Northern rules of the Maintenance of Way in connection with the
two on track machines you were operating nearly colliding with Norfolk Sou-
thern Train 552 at Jasper, Alabama on December 1, 1986."

Rule 70(a) reads:

"When a signal at an Automatic Interlocking displays a red
aspect, on track equipment that shunts the track must stop
before passing the signal and remain there while employee in
charge operates the time release according to the instructions
posted in the release box. If the signal indicates proceed
after the instructions complied with, movement may pass the sig-
nal and move over the crossing. If the signal does not clear,
movement beyond signal and over crossing must not be made un-
til the employee at the crossing is sure there is no train or

engine movements approaching on any route and a proceed hand signal is received."

Rule 70(b) reads:

"When a signal at a manual interlocking displays a red aspect, on track equipment that shunts the track must stop before passing the red signal. The employee in charge of the machine must communicate with the Control Operator and be governed by his instructions. If communications have failed, movement through the interlocking may only be made after lining all switches for the route to be used and the machine that occupies the track within the interlocking limits but clear of any conflicting routes for a period of ten minutes."

The transcript of investigation shows the following testimony of Claimant J. L. Young:

"Q. So you're between the signal and the train, is that correct?

A. Right.

Q. Let's see if I understand it. Now your machine - when you come up to the crossing the train hadn't come across the crossing yet.

A. Right.

Q. All right. So you keep on a coming and the train keeps a coming, and all at once did you see the train? When did you see the train?

A. The first beginning, I put on my brakes. I stopped, you know, I had to ease up there.

Q. OK. So you stopped.

A. I heard the train, you know, around the curve. I was looking out all the time.

Q. So you heard the train.

A. Right. So I just called myself being cautious. You know, I was going to ease up there to see what was coming, you know.

Q. Then all at once you saw the train.

A. Right.

Q. Then you stopped.

A. Right.

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.

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Q. Alright. To your knowledge, did Mr. Highfill operate the release on Interlocker?

A. To my notice, he was already across, and I don't, you know -

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.

Q. Alright. Did you hear Roadmaster Lang read Rule 70 in there about Automatic Interlocker?

A. Right.

Q. When a signal at an Automatic Interlocker displays a red aspect, on track equipment that shunts a track must stop before passing signal and remain there while employee in charge operates time release according to instructions in the release box. You heard him read that rule, did you not?

A. Right.

Q. But you didn't operate the release that day?

A. No, I didn't.

Q. You've taken a Book of Rules exam, have you not?

A. Right.

Q. Alright. Did you pass that exam?

A. Yeah.

Q. One of the questions on that exam quoted that rule, Mr. Young. Uh, how many days had they been going backwards and forwards across this interlocker?

A. We'd been going for quite a few days.

Q. Now you are familiar with Rule 70 then, the Roadmaster read you?

A. Right.

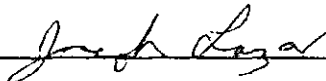
Q. Do you - on this December 1, 1986, do you feel you complied with this Rule?

A. Me? No." (Tr., pp. 28-31).

There is no dispute in the instant case that a near-miss between Claimant's ballast regulator and Norfolk Southern Train 552 occurred at Jasper, Alabama on December 1, 1986. Claimant admits that he did not comply with the governing rule applying to the Automatic Interlocking. Although the Foreman was in charge of seeing the machines over the Interlocks during the period involved, this did not relieve Claimant of his own responsibility to comply with the rules. Claimant's failure was a grave violation, resulting in a near-collision, and such violation might have cost him his life. The evidence of record shows substantial probative evidence in support of the Carrier's determination that Claimant violated Rules 70(a) and 70(b) of the Burlington Northern rules of the Maintenance of Way. The discipline of eight (8) days' suspension was not excessive.

A W A R D

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



JOSEPH LAZAR, CHAIRMAN AND IMPARTIAL NEUTRAL MEMBER

DATED: December 14, 1987