

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 54

Case No. 54

STATEMENT OF CLAIM

Claims (1) in behalf of J. L. Reed, Social Security Number 462-82-7021 and (2) L. L. Egerton, Social Security Number 466-48-3972, that their suspension from service for 5 days commencing July 18, 1994 and continuing through July 22, 1994 for alleged violation of Rules 1.4, 1.6, 6.50, 6.51, 21.1 and Safety Rules 1 and 567 is arbitrary, capricious, and on the basis of unproven and disproved charges and in violation of Rule 26 of the Agreement. It is respectfully requested that the claimants now be compensated for all wage loss suffered (5 days) and the charges and discipline be stricken from claimants' records.

FINDINGS

On May 17, 1994, Claimant Egerton was operating a Tamper and was followed on the track by Claimant Reed operating a Ballast Regulator. At some point, Egerton found the Tamper's electromatic hose was losing oil, and he determined it was necessary to stop the machine. He testified that he had put on flashing lights to warn the Ballast Regulator of the stop. Nevertheless, the Ballast

Regulator did not come to a stop in time to prevent a collision of the two machines, causing some damage to both.

Of the many rules cited by the Carrier, to be discussed further below, there is one fully familiar to both Claimants -- that on-track machines in sequence should remain at least 300 feet apart. Shortly before the collision, the two machines had passed through a crossing, where, after stopping for clearance, it is apparently accepted that two machines can be much closer together. This, however, did not thereafter prevent the Ballast Regulator from maintaining the 300-foot distance.

At the time the Tamper stopped, Reed, operating the Ballast Regulator, stated he was a "little over 200 feet" behind the Tamper. He stated that the oil on the tracks from the leaking Tamper resulted in making it more difficult to stop. As to the Tamper using lights to warn the Ballast Regulator, Reed stated:

He could have flashed 'em, but I didn't see him flash 'em. So I can't say he didn't flash 'em.

At the hearing and in the disciplinary notices, the Carrier cited many rules which the Carrier contends were violated by the Claimants. From the outset, the Organization objected that the hearing notice had not specified any rules of which the Claimants were accused of violating. The Claimants, however, were made fully aware of the incident to be involved in the hearing and thus had full opportunity to prepare a defense. Citation of rules allegedly violated is clearly helpful in hearing notices. Here,

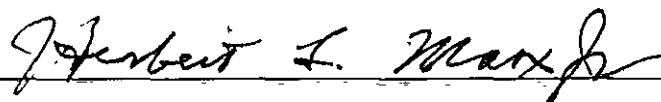
however, failure to do so did not make for an improper hearing, although there are instances where such citation is essential.

In his disciplinary notice, Egerton was charged with violation of Maintenance of Way Rules 1.4 and 1.6 and Safety and General Rules 1 and 567. Reed was charged with violation of all these, plus Maintenance of Way Rules 6.50, 6.51 and 21.1. Of the four rules which the Carrier says that Egerton violated, the Board finds no or insufficient proof as to this contention. No one disputed that Egerton had to stop his machine, based on his losing oil. He claims to have put on his flashing lights to warn the Ballast Regulator. It is difficult to determine what other course he could have followed. As to the Rules cited against Reed, the Board agrees that he was in violation of Rules 6.50 and 6.51, both of which are concerned with the distance which must be maintained while following another on-track machine. Although the oil-slick track may well have impeded the Ballast Regulator's ability to stop, it is not unreasonable that it could have done so had the specified 300 feet distance been maintained.

A W A R D

Claim #1 (Egerton) sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.

Claim #2 (Reed) denied.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: October 18, 1995