PUBLIC LAW BOARD No. 4381: Case No. 1

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

V.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF THE CLAIM

1. The fifteen (15) days suspension and revocation of Group 3 Machine Operator rights imposed upon Mr. G. P. Lewis for alleged "... violation of Rules 62 and 81 of the Burlington Northern Rules of the Maintenance of Way Department. ***" was arbitrary, unwarranted and on the basis of unproven charges (System File REG-BM-166/BMWB 85-12-14).

2. The Claimant's correct Group 3 Machine Operator date shall be restored to the District No. 18 roster, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

At about 3:00 p.m., on August 7, 1985, the Claimant, Mr. Gregory Lewis, drove a scarfier on to a siding where it and other machines were to be parked. In the course of this maneuver, the machine operated by Mr. Lewis struck a machine that was stopped ahead of it. Subsequently, Mr. Lewis was charged with operating the machine in an unsafe manner and was disciplined with a fifteen (15) days suspension.

There is substantial evidence that supports the conclusion that Mr. Lewis did not operate the scarfier in a safe manner. Mr. Sonju, the operator of the parked machine with which Mr. Lewis collided, testified:

> "So I started waving my arm and I looked in my mirror and couldn't get no acknowledgement. Then I started flashing my light and waved my arm as I went down to stop and I couldn't get any. As I stopped, I got on the side of my machine and waved my arm and I still couldn't get an acknowledgement out of the scarfier behind me. I left my light on and kept blasting my horn and the other scarfier ran into me."
>
> (Transcript, p. 7)

***

> "I never could get him to look around. His machine was facing the other way but he was not looking back at the direction we were traveling until about the fifth or sixth time I hit the horn, and then he looked back and then tried to stop."
>
> (Transcript, p. 8)

The testimony of Mr. Sonju was corroborated by another machine operator, Mr. Beck. He testified:

"2. Q. And did you see Mr. Sonju trying to signal to Mr. Lewis that he was going to make a stop?

A. Yes, he was signalling while he was stopping.

3. Q. And you say he was waving his hands trying to get Mr. Lewis' attention plus honking his horn?

A. Yes."

There is no evidence that the brake system on Mr. Lewis' machine was not functioning adequately. Mr. Lewis testified that the brakes controlled his descent of a hill just prior to reaching the siding. Mr. Lewis stated:

> "I feel that therefore, it was not a mechanical failure, it was a situational problem that had occurred immediately prior to the accident."
>
> (Transcript, p. 21)

The "situational problem" referred to by Mr. Lewis was a "wet spot" caused by a water sprinkler. Mr. Lewis argues that due to the water, the machine's brakes did not grip and lock up. Mr. Lewis' argument is not persuasive. Other machines that passed through that area immediately ahead of Mr. Lewis were able to park without colliding. There is no evidence that other machine operators experience reduced braking power due to water on the track. Moreover, Mr. Lewis has not effectively rebutted the testimony that he was inattentive while moving his machine onto the siding.

The record of this case indicates that Mr. Lewis was provided a fair and impartial hearing. There is no basis from which to conclude that the Carrier discriminated against Mr. Lewis in the assignment of discipline.

The Carrier has produced substantial evidence that Mr. Lewis was at fault and caused the accident through inattention and negligence in the performance of his duties.

AWARD

Claim denied.

Ronald L. Miller
Chairman and Neutral Member

Maxine Timberman
Carrier Member

Bruce G. Glover
Organization Member

3 August 1988