

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF THE CLAIM

1. The dismissal of R. L. Sorkness and D. E. Cook for alleged violation of Rule No. 1 of the Burlington Northern Safety Book and Rule 40 of the Rules of the Maintenance of Way was arbitrary, unwarranted, without just and sufficient cause on the basis of unproven charges and in violation of the Agreement (System Files B-Y-343/DMWB 87-05-04 and B-Y-342/DMWB 87-05-05).
2. The Claimants shall be reinstated with seniority unimpaired, their records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered, credited for vacation purposes and afforded all other rights and benefits denied them as a result of their dismissal.

FINDINGS OF THE BOARD

On the morning of January 6, 1987, the Claimants, Mr. David E. Cook and Mr. Randy L. Sorkness used a Hi-rail vehicle to travel to inspect a bridge. The vehicle, driven by Mr. Cook, was struck on the main track by Train 7021 at 9:44 A.M. The vehicle was damaged and the Claimants were injured. Prior to their departure, Mr. Cook had obtained a train lineup from agent operator Ms. Kathy L. Weaver. The lineup showed that Train 7021 was scheduled to leave Glendive, Montana at 6:45 A.M. In response to an inquiry from Mr. Cook as to the location of the train, Ms. Weaver wrote "called 0945" near the entry for Train 7021. Mr. Cook interpreted the "called 0945" to mean that Train 7021 left Glendive at 0945 rather than at 0645. Ms. Weaver intended "called 0945" to mean that Train 7021 was to be called at Forsyth, Montana at 0945. Based upon their interpretation of the "called 0945" entry, the Claimants believed they had sufficient time to inspect the bridge before the arrival of Train 7021.

A number of procedural issues have been raised by the Organization. First, we find that the notice of investigation was sufficiently specific as to the charges to permit the Claimants and their representatives to prepare defenses. There is no indication in the record that the Claimants were prejudiced by the form or the content of the notice.

Second, the contention that the Carrier prejudged the case is not substantiated by the record. The engineer of Train 7021 was properly in attendance at the hearing as a witness rather than as a principal. A separate investigation for the train crew, as provided for under their collective bargaining agreement, was right and proper. Additionally, we find no improper contact between the investigating officer and a witness,

Mr. William Dahlin. There is no evidence in the record that the investigating officer had prejudged this matter. Finally, we find no element of prejudgment in the Carrier's decision to have only the Claimants, and not the train crew, submit to a urinalysis. The Claimants, not the train crew, were improperly on the track at the location of the collision. Moreover, at no time prior to or during the hearing did the Claimants contend that the train crew acted improperly.

Moving to the merits of this matter, Mr. Cook should have contacted the train dispatcher before occupying the main line track. There is no dispute that the Claimants did not follow a procedure they knew they were required to follow. Ms. Weaver was in error in providing train movement information without permission from the dispatcher (misconduct for which she was subsequently disciplined). Nevertheless, Ms. Weaver's misconduct does not relieve the Claimants of responsibility for their own misconduct. Having improperly obtained train movement information, the Claimants assumed they understood the meaning of "called 0945" without further clarification. This failure to follow standard procedure and the erroneous interpretation of the cryptic "called 0945" resulted in tragic consequences for Mr. Cook and Mr. Sorkness. There is substantial evidence in the record from which to conclude that the Claimants violated Rule No. 1 of the Burlington Northern Safety Book and Rule 40 of the Rules of Maintenance of Way.

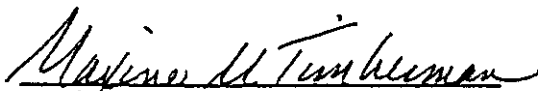
Mr. Sorkness and Mr. Cook have eighteen (18) and sixteen (16) years of service with the Carrier. Upon consideration of the record of this case and the Claimant's years of service, we believe that discipline has served its purpose. Therefore, Mr. Sorkness and Mr. Cook should be returned to employment with the Carrier, without back pay but with their service restored.

AWARD

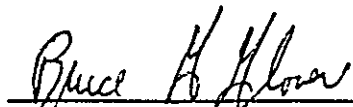
Mr. Sorkness and Mr. Cook shall be returned to employment with the Carrier, without back pay but with their service restored.



Ronald L. Miller
Chairman and Neutral Member



Maxine Timberman
Carrier Member



Bruce G. Glover
Organization Member

16 Sept 88

Date