

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

V.

BURLINGTON NORTHERN RAILROAD

STATEMENT OF THE CLAIM

1. The thirty (30) days suspension imposed upon Machine Operator R. T. Ruiz for alleged "... violation of Burlington Northern Railroad Company General and Safety Rules (Nos. 62, 65 and 81) on June 7, 1985, when you failed to stop your machine which resulted in the collision. ***", was arbitrary, unwarranted and on the basis of unproven charges (System File REG-SP-131/AMWB 85-12-30A).
2. The Claimant's Group 3 Machine Operator seniority date shall be restored, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

At approximately 2:45 p.m. on Friday, June 7, 1985, a collision occurred between a tamper operated by Mr. Robert T. Ruiz and a stopped tie injector. The accident occurred in the middle of a blind curve, the down grade of the track was 2.2%, and the weather conditions included occasional rain. Mr. Ruiz was moving with two (2) heavily loaded push cars. As a result of the collision, there was damage to the equipment and injury to several persons who were riding with Mr. Ruiz. Subsequent to an investigative hearing, Mr. Ruiz was disciplined with a thirty (30) days suspension for allegedly operating his machine in an unsafe manner.

The Organization has raised a number of issues in its appeal of the claim. First, the record clearly indicated that Mr. Ruiz was aware of the charges against him, and he and the Organization prepared a substantial defense. Second, there is nothing in the record that indicates that the investigating officer's duties deprived Mr. Ruiz a fair and impartial hearing. Third, there is no evidence that Mr. Ruiz was treated in a discriminatory manner compared with other persons involved in the collision. In summary, we find that Mr. Ruiz was provided a fair and impartial hearing.

Moving to the merits of this case, the Carrier has not established by substantial evidence the charges of negligence. Moreover, there is nothing in the record that would support a conclusion that poor judgement or unsafe operating practices on the part of Mr. Ruiz caused the accident. Certainly, running the machine without an operative windshield

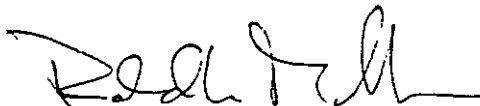
wiper was unwise, but there is nothing in the record that indicates that this condition contributed to the collision.

The Carrier has not convincingly established that Mr. Ruiz was traveling at an unsafe speed (under very adverse conditions). Mr. Ruiz had no reason to know that the tie injector had stopped ahead of him. Moreover, the tie injector was parked in the middle of a blind curve. No flagman had been posted to signal that the tie injector was stopped. Even at the reduced speed Mr. Ruiz was moving, there was insufficient distance for the machine to stop without hitting the tie injector. The weather, the grade and the heavily loaded machine sustained the forward momentum. There is no evidence that the braking system was functioning inadequately or that Mr. Ruiz failed to brake as soon as possible.

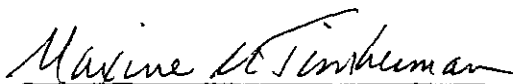
Mr. Ruiz is not guilty of negligence nor did he operate the tamper in an unsafe manner to cause the collision.

AWARD

The Claim is sustained. Mr. Ruiz's seniority date shall be restored; his record shall be cleared of the charges leveled against him; and Mr. Ruiz shall be compensated for all wages lost as a result of the disciplinary suspension.



Ronald L. Miller
Chairman and Neutral Member



Maxine Timberman
Carrier Member



Bruce G. Glover
Organization Member

30 August 1988

Date