

D-2591
Award No. 1
Case No. 1

PUBLIC LAW BOARD NO. 5696

PARTIES
TO
DISPUTE:

Burlington Northern Railroad Company

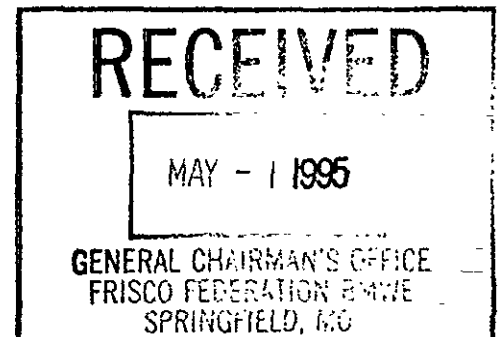
AND

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline imposed upon Mr. T. L. Porter for alleged "... responsibility, if any, in connection with an alleged accident involving company vehicle No. 5200 at or about 11:15 hours, May 18, 1993 ... causing damage to company vehicle No. 5200." was unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement.
- (2) As a consequence of the violation referred to in part (1) above, the Claimant's record shall be cleared of the charges leveled against him, and he shall be compensated for all wage loss suffered.



FINDINGS

Upon the whole record the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

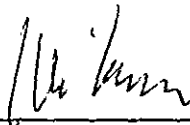
The record indicates that on May 18, 1993, Claimant was operating as a welder on a private track at a private road crossing in the Oklahoma City yard. The record indicates that the truck that Claimant was driving while functioning as a welder collided with a yard engine at the private crossing, resulting in damage to the vehicle but not the engine. There were no personal injuries involved.

The testimony, from the investigation, indicates that Claimant, with his helper, were riding in the welding truck parallel to the main line and switching leads when Claimant drove his vehicle onto the crossing. When the Claimant and his helper heard the locomotive approaching, they stopped and the locomotive passed all but its tank, which struck the bumper of the vehicle, damaging it. There is no question but that the accident occurred because of the location of the truck at the time that the yard engine was moving. The only issue was whose fault was it that this did occur, which might have been a much more serious event. Claimant and his helper both believe that the switch engine was operating at an accelerated rate beyond that which was normal in approaching the vehicle that

they were driving, which had stopped. However, the record is devoid of any evidence to indicate that the switch engine was operating at a higher than normal speed level. All indications are that it was the Claimant's culpability in not being sure that his vehicle was clear of the track, which resulted in the accident. From the evidence adduced at the investigation, it is apparent that he is responsible for the event in spite of his question with respect to the speed of the switch engine. Both parties recognize that the engineer could not possibly see the vehicle from his vantage point. Based on the evidence indicated, Carrier was within its rights in determining that Claimant was responsible for the mishap and the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
April 27, 1995

