

PUBLIC LAW BOARD NO. 5814

Case No. 21

Award No. 21

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer Michael Roberts for removal of discipline (censure and five day suspension) from his personal record and that he be made whole for all lost time.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

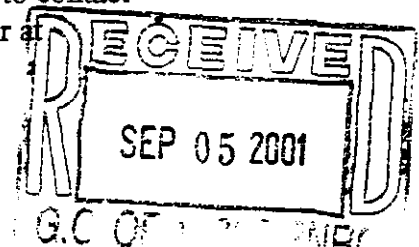
That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

Claimant was assigned to the Denver-Sterling Coal Pool. On December 17, 1994, he was the Engineer of Train No. 267KK051 operating between Denver and Sterling, Colorado. At around 1:00 a.m. the Claimant's tour of duty ended and he dismounted engine 5115 in front of the Sterling Yard Office. He put his grip over his shoulder and climbed down the ladder facing the engine. When the Claimant stepped down to the ground he noticed some pain in his right wrist.

The Claimant and Conductor Renshaw were transported to the Carrier's lodging facility in Sterling. At the motel the Claimant told Conductor Renshaw about his injury. He said that if it bothered him when he got up that morning he was going to contact Trainmaster Hartwig. The Claimant did not want to wake the Trainmaster at 1:00 a.m.



When the Claimant awoke, his right wrist still hurt so he reported his injury to Trainmaster Hartwig at 1:00 p.m. on December 17, 1994. He was transported to a hospital in Sterling where a doctor determined that he might have a muscle pull. He was instructed to soak his wrist and apply ice and to see a doctor when he returned to Denver. When the Claimant returned to Denver he was examined by a doctor who thought he had some type of tendon problem in his wrist.

The Claimant was notified to attend an investigation on January 10, 1995, regarding his alleged failure to perform his duties in a safe manner resulting in a personal injury to himself at Sterling, Colorado on December 17, 1994. On February 1, 1995, the Carrier advised the Claimant that this charge was sustained and he was being assessed a censure and a five day suspension as a result.

It appears to this Board that the Claimant properly dismounted engine 5115 on December 17, 1994, at Sterling. He faced the engine while dismounting and maintained three-point contact with both feet on the ladder steps.

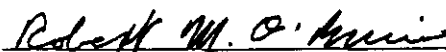
There is no question that the Claimant did not follow recommended procedure when he placed his grip over his shoulder while dismounting the engine rather than remove it from the engine after he was on the ground. However, there is no evidence that this was the cause of the injury to his right wrist. The Claimant has convinced this Board that he acted prudently in removing his grip from the engine in this manner. He explained that he would not have been able to reach his grip if he placed it on the engine then dismounted the unit.

Finally, this Board finds that the Claimant was not unreasonable in waiting until he awoke from his rest the morning of December 17 before reporting his injury. Rather than wake the Trainmaster at 1:00 a.m. the Claimant waited until after his rest to determine if his wrist still hurt. When his wrist still bothered him the Claimant contacted the Trainmaster. This was a reasonable decision on his part.

For all the foregoing reasons, the discipline assessed the Claimant on February 1, 1995, must be expunged from the Claimant's record and he must be made whole for all lost time.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective
on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member

Dated: 8/31/01