

PUBLIC LAW BOARD NO. 5814

Case No. 34

Award No. 34

PARTIES TO DISPUTE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Engineer M. A. Elliott for removal of the discipline assessed him on February 17, 2000, and that he be made whole for all lost wages and benefits,

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.

On October 27, 1999, Claimant was working as the Brakeman on Local LPAC5381, the so-called Local YPT, at Wapato, Washington. The YPT picked up an engine (BN 2084) at Wapato and coupled it to the engine (BN 2747) in their consist. At approximately 11:30 p.m. the Claimant walked from the lead unit in the consist to the second unit where he intended to ride. He was carrying a lantern in one hand and a large grip in the other hand.

While walking on the walkway to the second unit, the Claimant fell down an eight inch step that he did not see. The step was illuminated by a domed light. The Claimant sustained an injury to his back as a result of the fall. He was transported to the emergency room of a hospital at Yakima where he was treated and released.

On December 2, 1999, the Claimant was notified to attend an investigation to ascertain the facts and determine his responsibility, if any, for his alleged failure to be

alert and attentive while working as a Brakeman on October 27, 1999, at Wapato, Washington. The investigation was held on February 3, 2000. On February 17, 2000, the Claimant was assessed Level 1 discipline (formal letter of reprimand) for his alleged failure to be alert and attentive to his duties as Brakeman on Local LPAC 5381-27 on October 27, 1999.

As observed above, on October 27, 1999, Claimant was working as the Brakeman on Local YPT. As such, he was governed by the Uniform Investigation Rule applicable to train service employees on the former Northern Pacific Railroad. Article IV (a) of that Rule requires the Carrier to assess discipline within fifteen (15) days from the date the hearing is concluded. Article IV (b) provides that the date of discipline notification will be the date the notice is received by the employee or the first attempted delivery of certified mail whichever date is earliest.

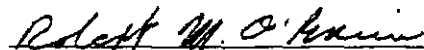
The Claimant's hearing was concluded on February 3, 1999. The notice of discipline was dated February 17, 1999. First attempted delivery of the Claimant's discipline, mailed to him by certified mail as required by the Investigation Rule, was February 19, 1999.

In accordance with the clear and mandatory terms of Article IV (b) of the Investigation Rule applicable to train service employees on the Northern Pacific Railroad February 19, 1999, was the date he was notified of his Level 1 discipline. As observed above, this was the "*first attempted delivery of certified mail*" notifying the Claimant that discipline was being assessed him as a result of the February 3, 1999, hearing.

February 19, of course, was 16 days from the date of hearing. Thus, the Claimant was not notified that discipline was being assessed him within 15 days from the date of his hearing as required by Rule IV (a) of the Investigation Rule. Because of this time limit violation, the instant claim must be sustained without addressing the merits of this dispute.

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: 12-2-02