

PUBLIC LAW BOARD NO. 5850

Award No. 196
Case No. 196

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Formal Reprimand on S. A. Hardisty & a ten (10) Day Record Suspension on G. K. Kress was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held at 10:00 a.m. on February 15, 2001 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, a Formal Reprimand and Record Suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant Hardisty is a licensed truck driver who on February 5, 2002, was driving

a 20 foot company truck. Claimant Kress is a Foreman, and on this date, was riding in the passenger seat of the truck. When they came to the point that they were to turn off the county road to a narrow road adjacent to the track, they had to swing wide into the on-coming lane in order to head the truck into the road adjacent to the track. At the moment they swung out to make the turn, a van attempted to pass them on the right. They collided, doing some damage to each vehicle, but fortunately no one was injured.

The Carrier then cited both for an investigation and at the conclusion, believing they had furnished substantial evidence of the culpability of each Claimant for the charges assessed, they assessed Truck Driver Hardisty a formal reprimand and Foreman Kress a record ten day suspension.

Claimant Hardisty said the van was waiting to enter the county road from a driveway when they passed. He also stated he checked the mirror before swinging wide to make the turn and believed he had sufficient time to complete the turn. Foreman Kress had a very limited view of the traffic to his rear and did not see the van until a split second before they collided. All he could do was yell, but it was too late to prevent the collision.

The County Sheriff called to investigate did not issue anyone a ticket. He simply wrote up the incident. If anyone was in violation of any traffic law, it was not noted.

The van starting to pass on the right was traveling about 50 MPH according to the van driver. She ignored the turn signals on the truck and stated she assumed the truck was going to park on the left shoulder of the road. Under the circumstances, the van driver was negligent, not the Truck Driver and certainly not the Foreman.

The Truck Driver has been with the Carrier since October, 1995, and up to this

incident, has a clear record. The Foreman has been with the Carrier since March, 1977, and has only two disciplinary entries, plus one quality performance entry when he discovered a run through switch.


In other words, in this Board's view, both Claimants have excellent records. They have been in the collision and will undoubtedly remember it for some time. Therefore, this Board finds no reason to uphold the discipline. All traces of the discipline and this hearing are to be removed from each Claimant's record. If either lost time because of the incident, they are to be paid as provided for in the current Agreement.

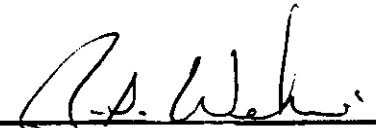
AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: May 24, 2012