

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on August 29, 2003, when it issued the Claimant, Mr. J. D. Garcia, a 30-day record book suspension and 1-year probation, for failing to control his machine and not wearing a seat-belt, in violation of Maintenance of Way Operating Rules 1.1.1, 1.1.2, 1.6, 6.50, and 6.51 and the Maintenance of Way Safety rule S-14.1.2.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove any mention of this incident from the Claimant's personal record and make him whole for any wages lost account of this alleged violation.

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 was operating a spike pulling machine. The entire crew moved to a safe track and Claimant was instructed to run to the end of the track to tag out a switch. This is required for the safety of all concerned as tag out means to not only red tag the switch, but to lock it or spike it so it cannot be thrown without removing the spike or lock.

Claimant then returned to the group of machines but was unable to stop the spike puller. It struck another machine in the line. Claimant, aware of the impending crash, unbuckled his seat belt and jumped to avoid what he believed could have been a serious injury.

An investigation was held and Claimant was assessed the discipline set out in the Statement of Claim.

The Carrier ran a reenactment of the collision, but Claimant's machine braked as it was intended. The reenactment was done more than once and the spike puller functioned properly each time.

No one has found any mechanical problem with Claimant's machine that would cause the braking system to fail, yet here we have an experienced machine operator on a perfect day with clear vision running into his own consist. When it became obvious the machine was not stopping, Claimant unbuckled his seat belt and jumped. No one witnessed the collision.

The Board can find no negligence in Claimant's actions regarding the machine, nor evidence that the machine's braking system worked perfectly for Claimant.

There is, however, the matter of Claimant removing his seat belt and jumping before the collision. Whether this was a logical action by Claimant or not, it is not a matter for this Board. The Rule mandates the use of seat belts.

Claimant cannot be found responsible for the collision, but he can be, and is found, culpable for removing his seat belt.

His discipline is therefore reduced to a formal reprimand relating only to the removal of his seat belt.

AWARD

Claim sustained in accordance with the Findings

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


William L. Yeck, Carrier Member

Dated: 7-9-04