

PUBLIC LAW BOARD NO 5850

Award No. .
Case No. 30

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to Suspend Central Region, Truck Driver A. T. Nez from service for forty-five (45) days was unjust.
2. That taking into consideration the letter of October 28, 1996 the Carrier now expunge the Level 5 Forty-Five (45) Day Suspension from Claimant's Personal Record and pay for all wage loss as a result of an Investigation held 1:00 p.m., October 21, 1996 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, 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.

On October 7, 1996, the Carrier directed the following letter of charges to Claimant:

"...You are hereby notified to attend formal investigation to be held in the Division Engineer's Office at 1:00 p.m., M.D.S.T., Monday, October 21, 1996, to determine

the facts and place responsibility, if any, concerning your alleged failure to operate AT-94130 (while hi-railing) at a speed which would allow stopping within ½ the range of vision, which resulted in a collision when AT-94130 struck the rear of AT-93596 (Gallup Section Truck) which was stopped at the Gonzales road crossing in the process of setting off the track at approximately 12:25 p.m. on September 24, 1996, causing injury to an employee and damage to equipment, in possible violation of Rules 1.1 and 6.50 of Maintenance of Way Operating Rules, effective August 1, 1996...."

On October 25, 1996, Carrier wrote Claimant assessing discipline of a 45 day suspension. On October 28, 1996, Carrier again wrote Claimant, modifying the discipline assessed because Claimant agreed to participate in a Positive Corrective Action which is a newly devised method of dealing with suspensions brought about by incidents such as is evident in this case.

The scenario leading to the accident has been clearly established through testimony at the Investigation. Claimant was the driver of the trailing truck in a two truck convoy. As reenactment of the incident revealed, Claimant had a clear view of about 3100 feet from the point they cleared a cut and where the lead vehicle was stopped. Using a truck similar in size and weight to Claimant's truck, when traveling at a speed approximating the speed of Claimant's truck, it took 190 feet to stop.

Claimant testified the brakes on his truck were in good working order. The Carrier also ruled out any possible affliction of Claimant that may have contributed to the incident as Claimant's drug and alcohol test was negative, and the company doctor found no physical problem.

What the transcript has developed is a series of assumptions accepted without acknowledgment that did contribute to the incident that occurred.

First, all participants had a briefing prior to the commencement of the convoy. Each knew what was to be done and where it would be done, and when and where they would be stopping.

The lead unit slowing to stop radioed Claimant's vehicle of its intent to stop. Even though they received no response, because of the job briefing, they assumed Claimant was aware of their intent to stop. Upon stopping, the driver of the lead unit signaled the trailing unit by waving his hard hat. They received no acknowledgment of the hand signal (which is a short beep on the horn) but again, because of the job briefing, they assumed Claimant was aware they had stopped.

Claimant's passenger testified he heard the radio warning of the intent to stop, assumed Claimant heard it also, but admitted neither acknowledged the message. The passenger also saw the hard hat signal, cautioned the driver to slow down, again without acknowledgment, again assuming Claimant had seen the signal, heard the radio and the warning of the passenger. It was also testified that Claimant's passenger did not think Claimant was dozing although he could not see Claimant's eyes as he was wearing his safety goggles with shields.

Claimant testified that after he cleared the cut, he remembered nothing until he hit the brakes about 30 feet shy of the stopped lead unit (and 160 feet short of the estimated stopping distance of his unit).

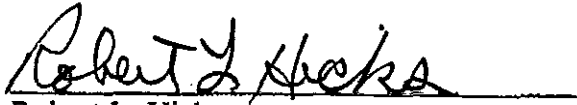
Clearly, others contributed to the incident (which is different than the facts in Case No. 23) by the false assumptions accepted without assurances, but Claimant was in control. His foot was on the brake and/or the accelerator. Under the circumstances evident in this case, the 45 day suspension, which has been reduced at least 22 days with Claimant's participation in Positive Corrective Action, was not harsh nor an abuse of Carrier's authority.


AWARD


Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks
Chairman & Neutral Member


C. F. Foosc
Labor Member


Greg Griffin
Carrier Member

Dated 1/13/97