

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 49

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 issue a Level 1 Formal Reprimand and assign a one-year probationary period for Eastern Region, Assistant Foreman R. L. Townsend was unjust.
2. That the Carrier now rescind their decision, expunge all discipline, transcripts and pay for all wage loss as a result of an Investigation held 10:00 a.m., June 24, 1997 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 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.

Claimant, a Section Foreman at Waynoka, Oklahoma, was driving a 2 ton dual rear axle dump truck when, in an effort to spot the truck by backing into an access road, cut too sharply causing the right front wheel to run into the ditch, hanging the front end on a culvert.

During Claimant's effort to free the truck, his Supervisor came upon the scene, took charge of the effort and moved the truck with the use of a front end loader by dragging the unit off the culvert.

The front end mechanism was damaged causing the Carrier some \$400 for repairs, thus Carrier cited Claimant for violating several Safety Rules, one of which, Rule S-12.8, sets out the

guidelines an employee must follow when backing a vehicle. The Carrier found Claimant culpable of the charges and assessed a level one discipline of a Formal Reprimand limiting its effectiveness to one year. (This is as provided for in the disciplinary policy.)

The end result of Claimant's actions is undisputed. The truck was hung up on a culvert and some \$400 damages resulted. Thus, this Board finds it necessary to determine the why and if the Carrier provided substantial evidence of Claimant's culpability.

The main rule of concern is the back-up rule. It is in two parts setting out the responsibility of the driver when backing. If available, a groundman is required to guide the driver. If none is available, the driver must walk around the vehicle taking note of any potential hazard that is to be avoided.

Despite Carrier's efforts to show Claimant could have found someone to act as a guide in backing, it is clear the crew was working three to four hundred feet from the access road. Claimant did not commandeer one of the workers as he had walked around his truck and made note of the potential hazards before he attempted to back in. His only error was in judgement, in turning too sharply that led to the right front wheel in running off the roadway and into the ditch causing the truck to be hung up on a culvert. It appears to this Board at this juncture that Claimant simply erred in judging the degree of his turn. It cannot be said that he violated any part or portion of the back-up rule. The other rule, which obligates an employee to take the safe course does not quite fit in this case.

Regarding the damages, this Board cannot determine from the record how they occurred. The question of whether the damage was incurred at the instant the truck became hung up on the culvert or whether it was incurred when the front end loader dragged the unit off the culvert cannot be answered as this Board is confronted with irreconcilable dispute in facts with conflicting opinions as between the Roadmaster and Claimant and his peer.

This is not a credibility of witness issue as neither the Roadmaster nor Claimant and his peer have established credentials as certified mechanics. Each has simply advanced an opinion.

Under the circumstances, it is the Board's opinion that the Carrier's decision to assess a formal reprimand is too severe. The reprimand is to be reduced to a cautionary letter to be retained in Claimant's file, but never to be used in any future disciplinary assessments.

This entire matter, hopefully, will serve as a reminder to Claimant that in going about his assigned duties, he cannot be too careful.


AWARD

Claim sustained as provided in 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


C. F. Foote, Labor Member


Thomas M. Rohling, Carrier Member

Dated: