

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level 1 Formal Reprimand for Western Region, J. M. Haley 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 4:00 p.m. June 8, 1998 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.

Claimant had a piece of glass removed from his eye. The story is that when riding on the bus from the motel to the work site, he at first, sat next to a window that had a nickel sized hole with spidery cracks radiating outwards.

The Carrier issued a rather vague notice of charges, cited three rules in the investigation, and concluded this episode by issuing a formal reprimand finding Claimant guilty of violation Rule 1.6 which reads:

"Employees must not be:

1. Careless of the safety of themselves or others...."

The facts adduced by this Board are as follows:

The window on the bus was broken sometime during the night as testified to by a fuel truck driver who, at about 0200 hours parked alongside the bus. His description of the window leaves no doubts as to its condition. However, the bus driver did not report the broken window, nor did he leave a note for the Foreman either on the windshield or at the desk.

At 0420 hours when about 30 or so gang members were boarding the bus, Claimant sat on the seat next to the broken window. He knew it was freshly broken as he had to brush the glass off the seat before he sat down. At that time, he said nothing to nobody about the window, nor did anyone else on the bus, nor did the bus driver/Foreman notice the broken window when he examined the bus for lights working, flat tires, etc., before leaving for the work site.

According to the Claimant, after riding a short distance, he found the window was disintegrating as a piece of glass hit his forehead. He said at that moment he changed seats although he told his fellow gang members of the broken window, he said nothing to the Foreman.

When the bus stopped at a service station/convenience store several miles from the motel, Claimant then told the Foreman about the window who, in turn, advised against sitting next to the window, but took no further action.

Upon arrival at the work site, Claimant mentioned to the Foreman that he thought he had a piece of glass in his eye, at which time the Foreman immediately drove Claimant to a medical facility.

From the Carrier's standpoint, because Claimant sat next to the broken window and did not, at first, report the broken window, he did violate Rule 1.6.

The Board does find support for Carrier's decision to discipline. Although others were aware or should have been aware that the window was broken and said nothing, it was Claimant who sat by the window, jeopardizing his own safety, and by not reporting it immediately, jeopardized the safety of others.

Safety is a concern for everyone in the work place. Everyone must participate. It is not someone else's responsibility to report safety problems, and even though others knew (or should have known, i.e., the driver and his inspection) of the broken window and did nothing, the inaction of others does not excuse Claimant from his responsibility under the rule.

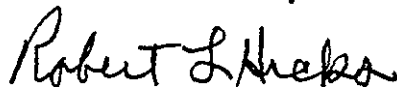
The notice of charges is not a model to be followed in other cases as it is somewhat vague and lacking in a citation of rules, but it has not been shown the lack of rules in the notice of the investigation violated existing contract rules, and Claimant's defense as conducted by his representative was as good as it could have been under the circumstances.

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


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: August 26, 1998