

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 90

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on May 8, 1998, the Carrier issued a Level S, suspension of thirty (30) days to S.B. James for allegedly violation of Rules 1.1, 1.1.1, 1.1.2, and 6.51 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged failure to prevent a collision at Edwards, CA, on March 20, 1998, between Ballast Regulator, BNX600161 and Tamper 6700, BNX5400336.
2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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, while operating a regulator, rear ended a tamper causing some \$1,200 worth of damages.

Claimant was charged as shown in the Statement of Claim, found culpable by the Carrier and was assessed a 30 day suspension.

A review of the transcript convinces this Board that Claimant was not 100% responsible for the collision.

His plea that he was an inexperienced operator works in his favor, but not necessarily as he intended. He was not a qualified operator, but he did not resist the urgings of the Roadmaster to operate the unit. However, when it developed that the brakes were indeed

faulty (stopping distance after reaching 10 MPH in a reenactment finds the unit stopped once at 43 feet, twice at 71 feet and once at 59 feet) and should have been adjusted, his inexperience permitted him to plead lack of knowledge about the brakes.

Another factor in Claimant's favor was the absence of the Lead Machine Operator at the investigation (although Claimant's Representative objected to his absence). This is so because facts were established that there was radio contact between the two units, yet Claimant testified the Lead Machine Operator did not use the radio to advise Claimant of his intent to slow down. This fact was not refuted.

On the other hand, Claimant's testimony of traveling only 10 MPH and the lead unit's statement of traveling only 10 MPH at the time of impact does not compute. If each was doing 10 MPH, they could have circled the globe without contact. Common sense tells you when you experience a rear end collision, the lead unit is either standing still or going slower than the trailing unit.

When common sense is matched with Claimant's testimony of recording the track warrant changes in his diary or log then looking up only to see that he was on top of the lead unit clearly shows that he was negligent by not keeping the required 300 foot differential between units when traveling on the same track in the same direction.

Under the circumstances, Claimant must shoulder a major share of the responsibility for the collision, but not the entire burden. Therefore, the discipline of 30 days will be reduced to twenty days out of service. Claimant is to be paid for all time lost in excess of 20 days in accordance with the practice in effect on the property.


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


Thomas M. Rohling, Carrier Member

Dated: November 2, 1998