

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 7
)
) Award No. 4
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
C. M. Will, Carrier Member

Hearing Date: January 21, 2002

STATEMENT OF CLAIM:

1. The Level 3 discipline (five (5) day actual suspension) assessed Machine Operator C. H. Brown for his alleged violation of Rule 1.1.2 when on March 8, 1999, the machine he was operating derailed was without just and sufficient cause, based on an unproven charge, unwarranted and in violation of the Agreement (System File MW-99-209/1191251-D MPR).
2. As a consequence of the violation referred to in Part (1) above, Machine Operator C. H. Brown shall now be compensated for all wage loss suffered and have his record cleared of the incident.

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

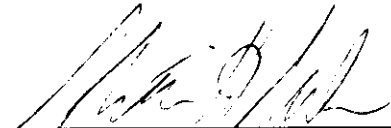
On March 10, 1999, Carrier notified Claimant to report for an investigation on March 24, 1999, in connection with his allegedly violating Rule 1.1.2 on March 8, 1999, when he allegedly derailed BR9825. The hearing was held as scheduled. On April 15, 1999, Carrier informed Claimant that he had been found guilty of the charge and had been assessed discipline at UPGRADE Level 3.


The basic facts are not in dispute. Claimant testified that on the date in question, he was operating the ballast regulator with the plow and right wing down. Claimant was plowing rock. He approached the switch, stopped, raised the plow but did not raise it far enough. He intended to place the machine in reverse but instead moved the joy stick in the wrong direction, causing the machine to move forward, striking the switch and derailling the machine.

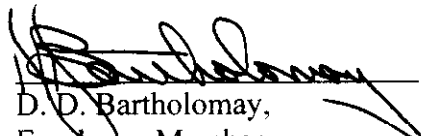
Thus, Claimant essentially admitted that he was negligent in operating the ballast regulator, by moving the joy stick in the wrong direction. In the words of Rule 1.1.2, Claimant's negligence constituted a failure to be alert and attentive.

AWARD

Claim denied.



Martin H. Malin, Chairman

C. M. Will,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, April 27, 2002.