

PUBLIC LAW BOARD NO. 2206

AWARD NO. 30

CASE NO. 27

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension of Section Foreman, R. C. Clark, Jr. and Truck Driver, K. L. McMillan, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File P-P-381C)
- (2) Section Foreman R. C. Clark, Jr. and Truck Driver K. L. McMillan be compensated for all time lost and the discipline be stricken from their record."

OPINION OF THE BOARD:

At the time of the incident at issue Claimants, R. C. Clark, Jr. and K. L. McMillan, were employed in the Track Subdepartment of Carrier's Maintenance of Way Department at Walla Walla, Washington. On Monday, January 9, 1978, Claimants were patrolling branch line track in a Hi-Rail Truck, which is equipped for on-track operation. Claimant McMillan was operating the truck and Claimant Clark was riding in the cab with him. At or about 1:45 p.m., while traveling eastward on the track between Sapolil and Dixie, Washington, their truck collided with an automobile at a public grade crossing at MP70.3.

As a result of that incident, both Claimants received notice under date of January 11, 1978 to

"Attend investigation in office of Agent, Walla Walla, Washington, 10:00 A.M., Tuesday, January 17, 1978, for the purpose of ascertaining the facts and determining your responsibility in connection with crossing accident at MP 70.3 between Sapolil and Dixie about 1:45 P.M., January 9, 1978."

Following investigation on January 17, 1978 each Claimant received notice of discipline as follows:

"Pasco, Washington
February 3, 1978

Mr. K. L. McMillan
Trackman

This is to advise you that an entry is being placed upon your personal record and you are being suspended from the service of BN Inc. from February 4 to February 13, 1978 inclusive, for violation of Maintenance of Way Rules 62 and 63 resulting in Hi-Rail Truck 8084 being struck by vehicle on crossing while working as truck driver about 1:45 P.M., January 9, 1978 near MP 70.3 between Sapolil and Dixie, Washington as disclosed by investigation accorded you January 17, 1978."

* * *

"Pasco, Washington
February 3, 1978

Mr. R. C. Clark, Jr.
Section Foreman

This is to advise you that an entry is being placed upon your personal record and you are being suspended from the service of BN Inc. from February 4 to February 13, 1978 inclusive, for violation of Maintenance of Way Engineering Division Circular 15 for failure to insure safe movement of Hi-Rail vehicle by employee under your supervision resulting in Hi-Rail Truck 8084 being struck by vehicle on crossing while working as section Foreman about 1:45 P.M., January 9, 1978 near MP 70.3 between Sapolil and Dixie, Washington as disclosed by investigation accorded you January 17, 1978."

The Organization appealed the assessed discipline on behalf of both Claimants, which appeals proceeded up to and including the highest level on the property. At each level the appeal was denied. The claim is, therefore, properly before this Board for consideration.

Carrier Rules applicable to the instant case are as follows:

"Rules of the Maintenance of Way Department
Rule 62:

Track cars and on-track equipment must approach persons, animals, all road crossings, equipment on adjacent tracks, frogs, switches, derails, tunnels, station platforms, curves and points where the view is obscured, prepared to stop.

"Rule 63:

In approaching and passing over public crossings not protected by a watchman, or by gates, track cars and on-track equipment are to be handled in the following manner:

- A. Approach crossing under complete control.
- B. Stop if necessary
- C. Flag crossing if necessary
- D. Movements over public crossings must be made in such a manner that there is absolutely no chance for an accident."

Also relevant is Maintenance of Way Engineering Circular #15, Paragraphs (h), (j), and (k):

- "(h) [Section Foremen] shall be responsible for the training, performance and conduct of all forces assigned to them.
- "(j) [Section Foremen] shall be responsible for the proper care and use of all equipment, tools, and materials assigned to them.
- "(k) [Section Foremen] shall be responsible for the safety of all forces assigned to them."

By Claimant McMillan's admission on the record, the Hi-Rail Truck was not under complete control when it approached the crossing in question. Rather it was in the process of stopping and slid well into the crossing. We do not find persuasive the Organization's assertion that the citizen's admission of culpability absolves Claimant McMillan. Had the Hi-Rail Truck not slid into the intersection, there would have been no opportunity for a collision. It is likewise irrelevant to the issue that the Hi-Rail Truck was at last stopped when hit by the oncoming vehicle.

At the hearing on the property Claimant Clark acknowledges responsibility for "the manner in which [Mr. McMillan] conducted the driving of the truck." Accordingly, he shared Mr. McMillan's culpability in this matter.

In light of the foregoing we do not find Carrier's assessment of ten (10) days suspension either capricious, improper, or unwarranted. On the contrary, it is apparent that Carrier took into account Claimants' previous good work records in imposing the discipline. Neither the awards cited by the Organization (all of which deal with dismissals) nor the record before us provide any reason to overrule Carrier's actions in this matter. The claim is therefore denied.

FINDINGS:

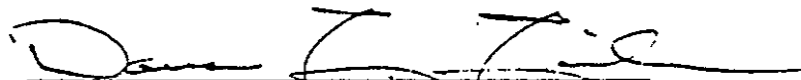
Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was not violated.

AWARD

Claim denied.



Dana E. Eischen, Chairman



L. K. Hall, Carrier Member



F. H. Funk, Employee Member

Date: July 15, 1980