

PUBLIC LAW BOARD NO. 2206

AWARD NO. 51

CASE NO. 56

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension of Track Inspector John D. Witstine was without just and sufficient cause. (System File T-M-224)
- (2) Track Inspector John D. Witstine be allowed pay for all time lost and his record be cleared.

OPINION OF BOARD:

At the time of the incident in question, Claimant was the regular assigned Track Inspector between East Minneapolis and White Bear Lake. His normal assignment was to perform track inspection duties, traveling via motor car. On July 10, 1978 Claimant placed his motor car on the track and proceeded to run his track inspector assignment. Before reaching White Bear Lake, Claimant's motor car was struck by local freight transfer coming out of White Bear Lake. As a result of this incident Claimant was notified by letter of July 12, 1978 to attend an investigation on July 21, 1978:

"for the purpose of ascertaining the facts and determining your alleged responsibility in connection with Motor Car BN 219265 being struck by Local Freight TRF No. 1, 500 feet west of M.P. 8.5, near White Bear Lake, Minnesota, at 9:50 A.M., on July 10, 1978."

Following the investigation Claimant was notified by letter dated August 10, 1978 that he was suspended for a period of thirty (30) days:

"for your failure to secure a train location line-up in connection with track car under your charge being struck by Transfer No. 1 near M.P. 8.5 MN 8th Sub-division about 9:50am July 10, 1978."

By letter of September 25, 1978 the Organization initiated the present claim on behalf of Mr. Witstine. The claim was denied at every level up to and including the Assistant to the Vice President, Labor Relations.

At the outset, let it be noted that we find no substance to the Organization's procedural objection to Carrier's mistaken reference to "Rule 35 of the Rules of the Maintenance of Way Department" as "Rule 35 of the Maintenance of Way Agreement". It is apparent from the transcript that no such confusion existed in the minds of Carrier, the Organization or Claimant and, therefore, Carrier's subsequent misstatement in no way taints the proceedings.

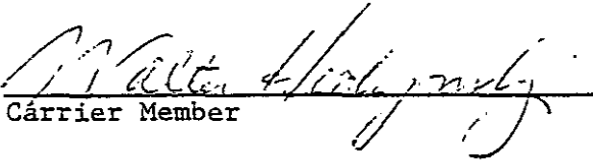
In its submission, the Organization maintains that line-ups were unavailable to Claimant. Rather, they argue, Claimant had been instructed to rely on radio contact to ascertain schedule and movement of trains on the track he was inspecting. Carrier has offered no evidence at the hearing or in subsequent correspondence to counter this allegation by the Organization. Accordingly, it appears that subsequent availability of line-ups notwithstanding (following the collision in question) Carrier tacitly condoned substitution of radio contact with the dispatcher for use of line-ups.

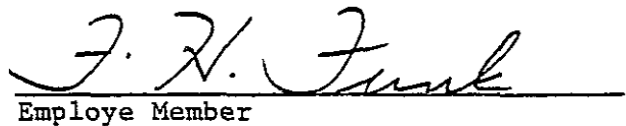
By Claimant's own admission, however, he attempted several times unsuccessfully to make contact by radio with the dispatcher as Claimant made his way toward White Bear Lake. Despite absence of response from the dispatcher, Claimant continued his journey which eventually culminated in the aforementioned collision.

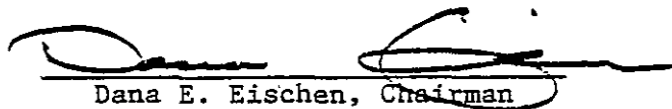
We find, therefore, that in light of Carrier's condonation, Claimant is not culpable for violation of Rule 35 of the Rules of the Maintenance of Way Department. He is nevertheless guilty of negligence regarding safe conduct of his motor car on his inspection tour. Accordingly, we will not overturn entirely Carrier's assessment of discipline. Rather, we will reduce the discipline to fifteen (15) days' suspension.

AWARD

Claim sustained in part and denied in part to the extent outlined in the above opinion.


Carrier Member


Employee Member


Dana E. Eischen, Chairman

Date: April 20, 1952