

PUBLIC LAW BOARD NO. 2206

AWARD NO. 77

CASE NO. 79

PARTIES TO DISPUTE:

BURLINGTON NORTHERN RAILROAD

and

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The demotion of Track Inspector, Stephen L. Hoffman, to Sectionman January 22, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File T-M-285C)
2. Claimant Stephen Hoffman be returned to the position of Track Inspector with his seniority restored, his record cleared, and paid for all wages lost including overtime.

OPINION OF BOARD:

Claimant was employed as a Track Inspector on the Track Subdepartment of the Maintenance of Way Department at Elk River, Minnesota. On Friday, December 6, 1979, the date of the incident in question, Claimant was patrolling track on the First Subdivision near Anoka, Minnesota. He was operating a motor car, traveling on Carrier tracks. At approximately 3:50 p.m., near Milepost 30 and approximately 25 feet from a railroad crossing, Claimant noticed an automobile approaching. Although he applied his brakes Hoffman was unable to stop his motor car before it impacted upon the side of the automobile. Both vehicles were damaged and Claimant suffered minor injuries to his right foot and back, but the automobile driver suffered no injuries.

As a result of this incident Claimant was notified by letter dated December 7, 1979 to attend an investigation to determine his responsibility in connection with his alleged failure to have Motor Car NP 39557 under control when approaching the grade crossing.

Following the investigation Claimant was found not to have had his motor car under control, a violation of Rules 62 and 63 of the BN Rules of the Maintenance of Way Department. As a result he was demoted to Section Laborer and notified of the decision January 22, 1980.

In the present case Carrier has failed to meet its burden of proof to demonstrate by a preponderance of probative evidence that Claimant failed to have his motor car under control. Carrier seeks to prove the case in two ways: first, it argues that the fact an accident occurred is proof that the motor car was not handled in the "absolutely" safe manner required by the Rules. This attempt to apply strict liability to Claimant for an accident cannot stand without proof of fault. Further, there is evidence admitted into the investigation and transcript showing that the driver of the automobile acted in a negligent manner by failing to stop at the red stop sign placed prior to the crossing. It is true that a citizen's admission of culpability may not absolve a Claimant who was otherwise guilty. See PLB 2206-30 (Eischen) and Award 3-10880 (Boyd). However, such is not the circumstance in the present case. Carrier has not proved fault on the part of Claimant and, as such, the accident itself cannot be dispositive of his guilt.

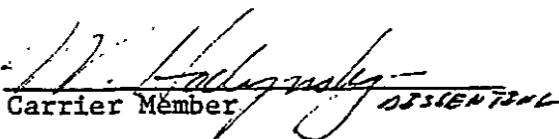
Carrier's second argument is that Claimant could have avoided the accident if he had installed ice brakes furnished to him for his motor car five days prior to the accident. It has not been shown that failure to install the ice brakes contributed to the accident and absent speculation

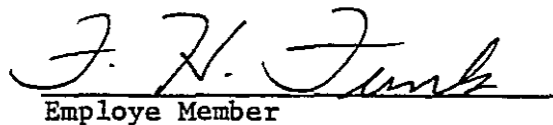
without other evidence that installation might have prevented the accident we cannot so assume. Perhaps Claimant should have installed ice brakes in the days preceding the accident in question, but Carrier has not provided a link between his failure to do so and the charge that he did not have his motor car under control when approaching the grade crossing.

Carrier has failed to prove by a preponderance of the evidence that Claimant failed to have the motor car under control. Accordingly, the claim must be sustained.

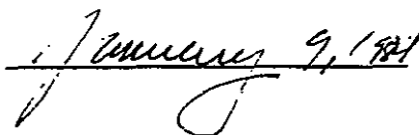
AWARD

Claim sustained. Carrier shall implement this decision within thirty (30) days of issuance.


Carrier Member


Employee Member


Dana E. Eischen, Chairman

Date:  January 9, 1981