

PUBLIC LAW BOARD NUMBER 3566

Award Number: 4 and 5

Case Number: 4 and 5

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claims on behalf of Foreman G.F. Bahr and Assistant Foreman K.G. Eifert requesting that they be paid for all time lost and charges removed from their records as the result of suspensions from service following investigations held January 13, 1983.

FINDINGS:

On November 29, 1982, motor car RC 2503 which Claimant Eifert was operating and in which Claimant Bahr was a passenger, collided head-on with motor car RC 2520 at Mile Post 23 plus nine 1/2 poles.

A hearing was held in order to determine Claimant's responsibility in connection with the collision. On the basis of the evidence adduced during the investigation, Carrier determined that Claimants had violated Rules 62 and 81 of Carrier's Rules of the Maintenance of Way Department, and that they should be dismissed from service. The Organization filed a claim protesting Carrier's actions and requesting that Claimants be returned to service with payment for all time lost and with all rights unimpaired. The claim was denied at all levels

of appeal on the property, although Claimants' dismissals were later reduced to 21-day suspensions. Unable to obtain satisfaction on the property, the Organization submitted the matter to this Board for resolution. CTC Maintainer Lloyd A. Williams, who was operating motor car 2520 at the time of collision, received no discipline by reason of Carrier's failure to charge him within the time limits specified in the agreement between Carrier and Williams' craft.

The issue to be decided in this dispute is whether Claimants were suspended for just and reasonable cause; and if not, what should the remedy be.

Carrier's Rule 62 states in part that track cars must approach other track cars and on-track equipment prepared to stop. Rule 81 requires that track cars "be operated at all times at a safe speed, giving consideration to grade, load, rail and weather conditions and controlling speed accordingly."

The collision occurred on an approximate four degree curve on a descending grade through a rock cut with limited visibility. Both Claimants testified that their car travelled a distance of approximately 127 feet between the time that they spotted the oncoming car and the point of collision. Both Claimants likewise testified that Eifert began braking as soon as the other car was spotted.

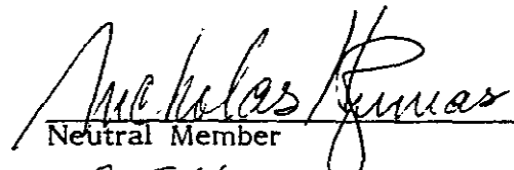
A motor car that requires nearly 130 feet to stop is not a car that is being operated at a safe speed, particularly where, as here, there is a downgrade and visibility is limited. It therefore was not improper for Carrier to conclude that

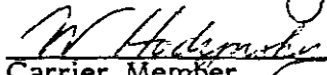
Claimants had violated the Rules as charged. In view of the danger presented by the unsafe operation of track vehicles, it cannot be held that the 21-day suspensions were harsh or excessive under the circumstances.

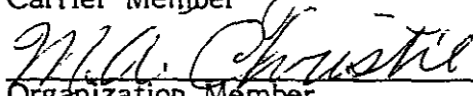
It is the opinion of this Board that the record contains clear and convincing evidence that Claimants violated Carrier's Rules as charged, and that the discipline assessed was not overly harsh or excessive. Accordingly, the claim is denied.

AWARD:

Claim denied.

  
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Neutral Member

  
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Carrier Member

  
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Organization Member

Date:

February 1, 1955