

PUBLIC LAW BOARD NO. 4104

Case No. 22/Award No. 22

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The twenty (20) days suspension imposed upon Machine Operator R.K. Ludeke for alleged violation of Rules 62 and 63 of the Rules of the Maintenance of Way Department was unwarranted, without just and sufficient cause and on the basis of unproven charges.

2. The Claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimant was regularly employed as a Machine Operator in the Track Sub-department in Maywood, Nebraska. Claimant was headquartered at Curtis, Nebraska, but was assigned to service at Wallace, Nebraska on September 28, 1982. On this date, Claimant was assigned to operate Electromatic Tamper BNX 54-0059. At approximately 3:30 p.m., Claimant was returning the Tamper to Carrier's Curtis facility. Claimant then collided with a private truck at a private crossing near Mile Post 82.20.

Subsequently, on October 1, 1982, Claimant was given notice to appear at an investigatory hearing. This hearing was held, as scheduled, at Carrier's Wallace, Nebraska Depot on October 12, 1982. On October 22, 1982, Claimant was given notice to the effect that he was being suspended for the 20 day period extending from October 27, 1982 to November 23, 1983, for "violating Rules 62 and 63 of the Burlington Northern Rules of

Maintenance of Way Department."

On December 10, 1982, the Organization filed the instant claim alleging that Carrier's assessment of a 20 day suspension against Claimant was unduly harsh. Carrier timely denied this allegation. Thereafter, this claim was handled in the usual manner on the property. It is now before this Board for adjudication.

Carrier urges that Claimant was properly disciplined after it was established by clear and convincing proof that Claimant violated Rules 62 and 63. Carrier asserts that Claimant admitted that he had failed to approach the crossing "prepared to stop" as required by the rules. Carrier points out several Awards which support its contention that any comparative negligence on the part of the driver of the truck does not absolve Claimant of his responsibility to comply with Carrier's rules. (See Third Div., Award No. 10880, and PLB No. 2206, Award No. 30). Carrier further asserts that although Rule 63 specifically addresses itself to public crossings, its requirement that vehicles be driven in a manner such that "there is absolutely no chance for an accident" expresses a general mandate which can not be cast aside merely because the crossing is private.

Finally, Carrier concludes that in light of the circumstances the discipline imposed upon Claimant was just. Carrier points to the serious jeopardy to life and limb as well as property which

could result from the violation of these safety requirements, in support of this position. Accordingly, Carrier asks that the grievance be denied.

The Organization, on the other hand, contends that Carrier has failed to prove that Claimant acted imprudently. It urges that because the accident occurred at a private crossing Rule 63 does not apply. Further, the Organization urges that it was reasonable for Claimant to expect that any vehicles would obey the stop signs posted on either side of the crossing. The Organization reasons that merely because Claimant admitted that the accident occurred does not establish that Claimant fell below the level of conduct set forth in the rules.

The Organization further suggests that Claimant's rights under Rule 40(c) were violated because Carrier did not hold the investigatory hearing at Claimant's Curtis headquarters. It submits that Claimant was harmed in its effort to secure witnesses as a result of the hearing locale. Accordingly, the Organization asks that the claim be sustained.

After careful review of the record evidence, this Board is convinced that the claim must be denied. This is true for a number of reasons.

First, it is clear that Carrier did not violate Rule 40(c) by holding the investigatory hearing at Wallace, as scheduled.

Rule 40(c) provides, in relevant part:

"Investigation shall be held as far as practicable, at the headquarters of the employee involved."

Claimant was afforded due notice of the hearing location, a location on Carrier's property and readily accessible. Claimant's opportunity to be heard could not reasonably have been impaired by holding the hearing at a nearby location convenient to Carrier's schedule. As it was impracticable for Carrier to hold the hearing at Curtis, Wallace was an appropriate alternative. Accordingly Rule 40(c) was not violated.

Second, Claimant admitted to approaching the intersection unable to stop his vehicle. While the applicability of Rule 63 may be argued, we need not decide that contention at this point as it is clear that Rule 62 does apply. Rule 62 states, in relevant part:

"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."

The transcript reveals that while Claimant was looking ahead at the crossing, he did not see the pick-up truck. The testimony indicated that the truck was travelling at approximately 20 mph while Claimant was travelling at 10 mph. Accordingly, the only explanation for Claimant's inability to see the truck was that his view was somehow obscured. Clearly, Claimant is required under the rule to conduct the 60,000 pound tamper prepared to stop at crossings if necessary.

4104-22
Case No. 22

Finally, the 20 day suspension imposed by Carrier was just. Claimant was operating a very heavy and potentially dangerous machine while not in complete control such that he could stop if necessary. This is a serious infraction. Accordingly, and for the foregoing reasons, the claim must be denied.

4104-22

Case No. 22

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD:

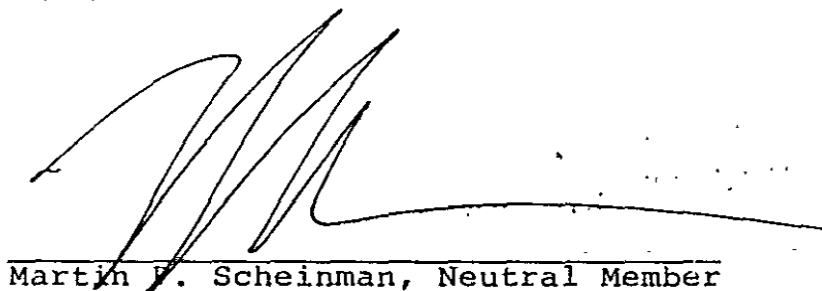
Claim denied.



P. S. Swanson, Employee Member



E. J. Kallinen, Carrier Member



Martin F. Scheinman, Neutral Member