

PUBLIC LAW BOARD NO. 4104

Case No. 74

PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The five (5) days suspension from service imposed upon Grinder Operator D.J. Paul for alleged violation of Rules 336(E) and 336(1) was arbitrary, without just and sufficient cause and on the basis of unproven charges.

2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant D.J. Paul, a Grinder Operator, was assigned to perform welder work with a gang near Falls City, Nebraska. On May 23, 1986 while operating Truck No. 5457, Claimant was involved in a vehicle accident with Truck No. 4289.

As a result of the incident, Claimant reported to an investigation held on June 6, 1986. On July 1, 1986, Claimant was assessed a five days suspension for his failure to operate a company vehicle in a safe manner thereby hitting another company vehicle.

The Organization appealed Carrier's suspension of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization establishes that Claimant was driving a two ton truck in the middle of a three truck convoy. It states that when the lead truck came upon a dead end, it required the convoy to turn around. While turning around, Claimant backed his truck

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into a Ford Ranger driven by Asst. Supervisor Kottivitz. The Organization asserts that Claimant exercised the necessary precautions before he started to back up. It further argues that Claimant was not given any instructions by Kottivitz that he was not to move the vehicle until Kottivitz could properly flag him. The Organization alleges that Claimant received disparate treatment in that he was the only employee charged in the incident. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, denies that it improperly suspended Claimant. It asserts that although the Organization attempts to place the blame upon Kottivitz, it is clear that Claimant backed up his truck and hit another vehicle. It asserts that it was Claimant's responsibility to wait for safety assistance to let someone guide him when the area was clear. It contends that Claimant took it upon himself to maneuver the two ton truck without any assistance. It maintains that such action by Claimant caused damage to the truck thereby establishing his guilt. Therefore, Carrier reasons that Claimant was properly suspended. It asks that the claim be rejected in its entirety.

The record evidence reveals that Claimant is guilty as charged. Claimant acknowledged at the investigation that he did not wait for necessary assistance before he proceeded to back up. The vehicles were stopped at a dead end with a small space to turn around. It is obvious that Claimant should have allowed time for the smaller vehicle to clear the area before he attempted to back up a two ton truck. Accordingly, Claimant clearly violated

appropriate Carrier rules here. For his actions on that date, Carrier properly imposed discipline.

As to the penalty imposed, we do not believe that a five day suspension was arbitrary, capricious or excessive. Thus, we will deny the claim in its entirety.

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;

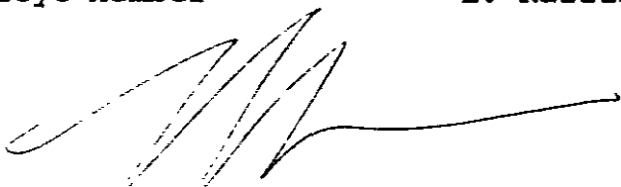
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

5-28/91