

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of Way Employees)	Case No. 51
)	
vs)	Award No. 31
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The discipline imposed upon J. B. Lounsbury for allegedly violating Rules 600 and 602 was unwarranted and on the basis of unproven charges.
2. The Claimant shall be cleared of all charges leveled against him, and he shall be compensated for all wage loss suffered.

FINDINGS

The Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with his allegedly damaging an electric switch machine at Division Street near Mile Post No. 429.7 on the Carrier's Minnesota 7th Subdivision. After the investigation was held the Claimant was advised that he was "restricted from using his Group 2 Machine Operator (license) rights effective January 22, 1985". At the time the incident occurred the Claimant was operating a Michigan front-end loader and he was moving rail in connection with replacing a crossover switch at the location where the electric switch machine was damaged. This discipline was appealed by the Organization up to and including the highest Carrier officer designated to hear such before this claim was docketed before

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this Public Law Board for final adjudication.

The Rules at bar read as follows:

Rule 600

The operator is in charge of the machine and must cooperate with the foreman or supervisor in charge of the work to see that the proper methods are used in doing the machine work in a safe manner. Machine operator will be held responsible for any negligence on his part.

Rule 602

Machine operator must be concerned with his own safety and the safety of the men working with or near the machine, particularly where noise may interfere with hearing, and use the necessary care to prevent accidents.

According to testimony at the investigation which was given by the Claimant he admitted that he "backed one wheel" of the front end loader he was driving "onto the end" of the electric switch machine. According to testimony by the Claimant, he ran over the switch because he was watching the backup signals being given to him by the foreman rather than looking behind him as he was pulling a rail backwards with tongs attached to the bucket of the loader.

In studying the record the Board notes consistent attempts by the Claimant in his testimony to develop the line of reasoning that he was not at fault when the switch was damaged because he was only following signals given by the foreman. In effect, the Claimant would have this Board conclude that the employee really responsible for the accident is the foreman and not himself.

The Board believes that such reasoning is contrary to both the intent and the clear language of the Rules at bar. Rule 600 says explicitly that the "... (t)he operator is in charge of the machine" he is driving and it implies that only the operator can and should be in charge of safely operating the machine. Such can

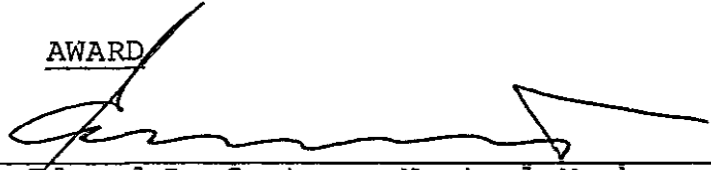
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only mean that an operator take responsibility for watching for obstructions in the front when going in that direction, and in the back while backing up irrespective of assistance from others, including foremen. Further, common sense suggests that the operator of a machine such as a front end loader, because of the operator's elevated position, is in a better position than anyone else to see obstructions in the path of the machine. Of greatest concern to the Board, in this case, is that the Claimant argues that someone else is responsible while he is operating a machine: such attitude is conducive to accidents and is in direct violation of the spirit of the unambiguous language of Rule 602, as well as the dictates of common sense. If the Claimant really thinks this, he ought not be operating equipment around fellow employees. The Board believes that the actions of the Carrier were proper when it revoked the seniority date of the Claimant and restricted his Group 2 Machine Operator rights related to the seniority date which was revoked.


There are other issues raised in this case with respect to tests required of the Claimant and various procedural matters. Such are, however, of tangential concern to the Board in view of the seriousness of the charges related to Rules 600 and 602 and they need not be addressed by the Board.

AWARD

The claim is denied.



Edward L. Suntrup, Neutral Member



Maxine M. Timberman, Carrier Member



Bruce G. Glover, Employee Member

Date: _____