

PUBLIC LAW BOARD NO. 4244

Award No. 215
Case No. 218

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Parties to Dispute:

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to issue a Level S Suspension for Western Region, Section Laborer G. S. Jordan from service for thirty (30) days was unjust.
2. That the Carrier now rescind their decision and expunge all discipline from Claimant's record and pay for all wage loss as a result of Investigation held 10:00 a.m., January 29, 1997 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in the decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

LABOR RELATIONS

OCT 29 1997

R. J. MORIN

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

The claimant, G. S. Jordan, a ballast regulator operator working in the Riverbank Yards in California, was provided with notice of a formal investigation into charges that he failed to properly protect a ballast regulator on November 26, 1996, in possible violation of Maintenance of Way Operating Rules 1.1, 1.6, and 6.3.2. The investigation was conducted on January 29, 1997, in Stockton, California, and on February 24, 1997, the Division Engineer issued the claimant a Level S suspension of thirty days for violation of the rules referenced in the notice of investigation.

The facts developed at hearing by the testimony of the claimant and a roadmaster, Rudy Sanchez, are straightforward. On November 26, 1996, the claimant was operating a ballast regulator in track four of the Riverbank Yard with the assistance of a foreman. While operating his equipment on track four, the conductor of a yard crew approached the claimant and the foreman, and stated that the yard crew needed to use track

four. According to the claimant, the foreman instructed him to place the regulator in track six, and "wait to be notified."

The claimant moved the ballast regulator to the lead, and then placed the equipment on track six. The track six switch was tagged, but it had no spike, and it was not lined against movement. The claimant indicated a red flag was displayed behind him and he placed a cone in front, but no derail was in place restricting access to the track. The claimant dismounted and asked the conductor of the Riverbank yard job whether it appeared the ballast regulator was in the clear. Having received a positive response from the conductor, the claimant walked to the depot to use the bathroom. While ensconced in the bathroom, the crew shoved a cut of cars onto track six and into the ballast regulator causing \$25,000 in damage.

While the claimant sought to shift partial responsibility onto the foreman, he admitted that he lined the switch so the regulator could enter into track six, but he did not line the track behind him. The red tag, which was in place on the switch prior to the claimant's actions, was used to indicate the track six switch was out of service on the east end, according to the claimant, and the switch was only spiked when the maintenance crew was ready to go home.

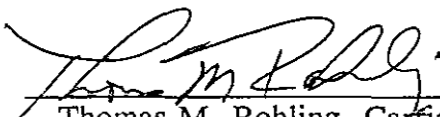
Upon further examination, the claimant admitted that Rule 6.3.2 required proper tagging and spiking, and that he failed to provide the necessary protection, in part, because he assumed the foreman would do so. The foreman had been protecting the claimant's movements up to the move into track six. However, the foreman was nowhere in

the vicinity when the claimant dismounted from the ballast regulator in track six, and he spoke only to the conductor of the yard crew concerning his location. Claimant did accept ultimate responsibility for protecting the equipment in question. The brakeman on the crew which shoved the cut into the ballast received a Level 1 suspension.

The Board finds that the Carrier met its burden of proof that claimant failed to properly protect a ballast regulator in the Riverbank Yard on November 26, 1996, contrary to Rules 1.1, 1.6 and 6.3.2. The Board also is convinced, however, that based upon all the evidence of record, including unrefuted testimony that the yard crew conductor was consulted by the claimant as to the location of the ballast on track six and evidence the conductor knew or should have known of the switch lined to the lead; the claimant's inexperience in operating alone with on track equipment; the absence of clear and consistent communications and conduct between the claimant and foreman; and in light of the quantum of discipline administered to the brakeman involved in shoving the cut of cars into the ballast regulator on track six, the suspension is found excessive, and is hereby reduced to a twenty-day suspension.

AWARD

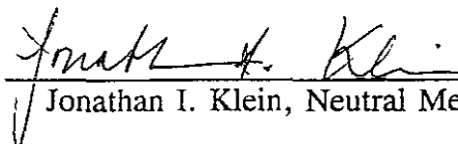
The claimant violated Rules 1.1, 1.6 and 6.3.2 on November 26, 1996, for failing to properly protect a ballast regulator. Based upon the record before the Board, the discipline is modified to a twenty-day suspension, and the claimant shall be compensated for wage loss for the balance of the original suspension found unwarranted.



Thomas M. Rohling, Carrier Member



Clarence F. Foose, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 10th day of December, 1997.