

PUBLIC LAW BOARD NO. 4244

**Award No. 220**

**Case No. 229**

## 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 assess Claimant twenty (20) demerits after the Investigation held July 9, 1997 was unjust.
2. That the Carrier now expunge the twenty (20) demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the Investigation July 9, 1997, because a review of the Investigation's transcript reveals that substantial evidence was not introduced that indicates the Claimant is guilty of violation of rules he was charged with in the Notice of Investigation.

## 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

Claimant Eliser Quinones, an equipment operator for the Los Angeles Junction Railway, discovered on the morning of June 17, 1997, that the right hand brake on a tie tamper was not working properly. The claimant, an eighteen-year employee, is listed on the seniority roster as a trackman and welder, but was designated by mutual agreement of the parties as a garage mechanic assigned to work on the Maintenance of Way Department equipment. The claimant received some on-the-job training, but was offered no formal instruction or training on railroad equipment upon his designation as garage mechanic. This on-the-job training included work on the tamper such as changing brake shoes, and repairs to the back hoe, front end loader, trucks, vans and automobiles. As a general rule, if the mechanical repair required skills or knowledge beyond the garage mechanic's capabilities, the task in question would be performed by the equipment manufacturer or one of the Carrier's suppliers.

The claimant brought the malfunctioning right front brake cylinder on the tie tamper to the attention of the general maintenance foreman, Carl White. White knew claimant was going to check the tamper, and both were aware the brake cylinder was under pressure. The claimant began work on the brake cylinder after releasing the air brakes, and stated he

observed no immediate signs of pressure. However, claimant's testimony contradicts his assertions that no pressure was observable.

Q. Did you at any time, when you were releasing the bolts, notice that any of them were difficult to take out or if there could have been any pressure behind it?

A. No. The housing had about ten bolts. Underneath it, it got two big bolt. [sic] When I saw the big bolt on the bottom of the housing, it had a lot of pressure in it. So I started unbolting the housing with the little bolt. (Tr. 32). (underlining supplied).

The claimant was about to remove the last bolt from the housing around the brake cylinder when the pressure caused the housing to break away resulting in an injury to one of claimant's fingers on his left hand.

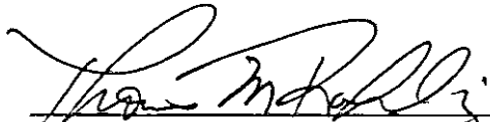
The Board finds that the Carrier left it to the discretion of the claimant and his foreman whether to proceed with work on a particular piece of equipment, or whether the task was beyond their skills and available tools to perform the job safely. In this respect, the initial decision for the claimant to work on the tie tamper cannot be faulted. However, as evident from the testimony, the claimant became aware in the process of the repair work that contrary to his initial assessment and efforts to release the air lines, significant pressure was present. Claimant further admitted that he had never performed this particular repair before, including removal of the bolts from the brake cylinder housing. In proceeding to unbolt the housing under these circumstances, the claimant acted in an unsafe manner.


As a result of the formal investigation, the Carrier assessed a twenty (20) demerit penalty based upon the conclusion that claimant violated numerous rules, including General

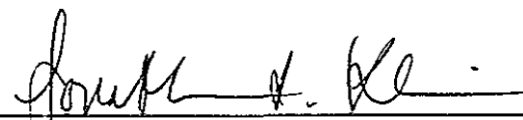
Rule C, J, 1, 24, 41, and 54, and General Safety Rules 1, 2, 3, 4 and 5 -- the identical rules cited in the notice of investigation. The Board finds no evidence, however, that claimant violated General Rule 54 in that claimant knowingly complied with a request to use defective machinery. Further, there is no proof that he failed to make the necessary accident report on Form 1421 as required by General Safety Rule 9. Accordingly, the Board modifies the penalty assessed to ten demerits.

**AWARD**

The claim is sustained, in part. Claimant's personal record shall be assessed ten (10) demerits for the incident of June 17, 1997.

  
Thomas M. Rohling, Carrier Member

  
Richard B. Wehrli, Employee Member

  
Jonathan I. Klein, Neutral Member

This Award issued the 7<sup>th</sup> day of August, 1998.