

PUBLIC LAW BOARD NO. 4244

**Award No. 227
Case No. 225**

Parties to Dispute: (**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYES**
(
(
(
(**-and-**
(
(
(**BURLINGTON NORTHERN SANTA FE RAILWAY**
(
(

Statement of Claim: Claim in behalf of Eastern Region Maintenance of Way Employees, M. S. Green and E. Rodriguez for expungement of a Level "S" suspension of thirty (30) days and a probation period of eighteen (18) months and pay for all wage loss beginning, when they are eligible for recall, or temporary service.

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

On November 5, 1996, the claimants, M. S. Green and E. Rodriguez, were involved in a truck-train accident in Salter, Kansas. Both claimants survived, but each was seriously injured. Claimant Rodriguez was driving the dump truck and claimant Green was a passenger at the time the accident occurred. The accident occurred when the claimants proceeded onto a railroad crossing in the path of train QLANY 103. Apparently, neither of the claimants saw the approaching train nor heard the train's whistle. The claimants were notified to attend a formal investigation in order to determine the facts and responsibility, if any, involving the accident on November 5, 1996, while working as machine operators on Center #27039.

As a result of the formal investigation held on January 7, 1997, the Carrier issued the claimants a Level S suspension of thirty (30) days for violation of Rules 1.1, 1.1.1, 1.1.2, 1.20, 1.6, 50.2, 50.2.3, 50.4.9, 50.6, 50.6.1, and 55.3 of the Safety and General Responsibilities for All Employees, effective January 31, 1996. The claimants were also assigned a probation period of eighteen (18) months upon their return to service. The Board finds that the evidence of record supports this decision for the following reasons.

The following rules of the Safety Rules and General Responsibilities for All Employees are applicable to the Board's decision in this case. Rule 1.1 provides: "Safety is the most important element in performing duties." Rule 1.1.1 provides: "In case of doubt or

uncertainty, take the safe course." Rule 1.1.2 provides: "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury." Rule 1.6 states, in relevant part: "Employees must not be: 1. Careless of the safety of themselves or others; 2. Negligent." Rule 1.20 provides:

Employees must expect the movement of trains, engines, cars, or other movable equipment at any time, on any track, and in either direction.

Employees must not stand on the track in front of an approaching engine, car, or other moving equipment.

Employees must be aware of the location of structures or obstructions where clearances are close.

Rule 50.2 states: "We have the right and responsibility to perform our work safely. Our training, skills, work experience, and personal judgment provide the foundation for making safe decisions about work practices." Rule 50.2.3 provides: "Assure that you are alert and attentive when performing duties." Rule 50.4.9 states: "Wear seat belts while operating or riding in equipment or vehicles that are equipped with them." Rule 50.6.1 provides: "Expect the movement of trains, engines, cars, or other movable equipment at any time, on any track, and in either direction." Lastly, Rule 55.3 provides: "All occupants in vehicles must use seat belts. "Vehicles" include: company vehicles; privately owned vehicles on company business; rented, leased, or hired vehicles."

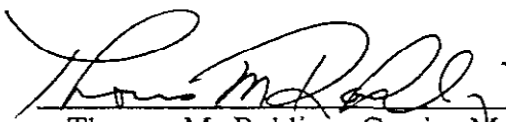
The Board concludes that the evidence of record discloses that the claimants were not alert and attentive. The crossing where the accident took place is protected by a stop sign and cross bucks. Witnesses testified that the dump truck stopped at the stop sign before the

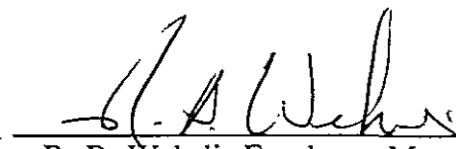
railroad crossing. The witnesses testified that the dump truck then proceeded through the crossing. The distance from the stop sign to the tracks is approximately 64 feet. The Board finds that the exhibits depicting the accident scene clearly point out that the claimants should have seen an approaching train if they were more attentive. Moreover, testimony at the investigation reveals that the train also employed its whistle as it approached the crossing. The accident was clearly a result of the carelessness and negligence of the claimants.

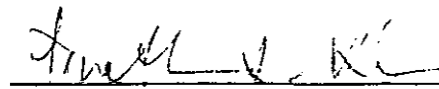
Furthermore, the Board finds that the evidence, including an independent report regarding the condition of the seatbelts and testimony of witnesses as to the location of the claimants immediately following the accident, establishes that the claimants were not wearing their seatbelts at the time of the accident. The claimants' injuries as a result of the accident may have been less severe had they been wearing their seatbelts as required. For each of these reasons, the Board finds that the Carrier has satisfied its burden of proof. The claim is denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 7th day of October, 1998.