

PUBLIC LAW BOARD NO. 4244

**Award No. 253
Case No. 261
File No. 170-1313-004.EXP**

Parties to Dispute:

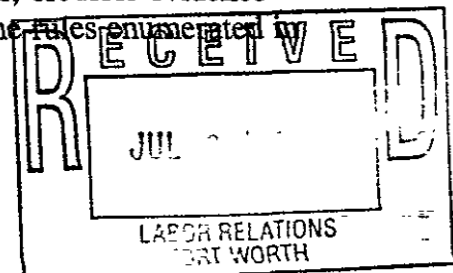
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**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

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BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to issue a Level 1 Formal Reprimand and Three (3) Years Probation was unjust.
2. That the Carrier now rescind their decision and expunge all discipline and transcripts as a result of an Investigation held 2:00 P.M., May 5, 2000, because the Carrier did not introduce substantial, credible evidence that proved that the claimant violated the rules enumerated in their decision, and even if the claimant violated the rules enumerated in the decision, a Level 1 Formal Reprimand and Three (3) Years Probation 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.



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 March 9, 2000, the claimant, trackman M. S. Anderson, was assigned to the Wickenburg section on the Carrier's Phoenix Subdivision. On this particular date, the claimant was working as a truck driver in the vicinity of MP 150.2. As part of his assignment, the claimant was required to assemble numerous track panels which would then be placed underneath the track. This task required the claimant and his crew to drill holes in the ends of the rail with a matweld rail drill. In the process of carrying the rail drill, the claimant slipped and fell as he stepped over the north rail of the track. The claimant's crew subsequently discovered the claimant on the ground. Thereafter, track supervisor R. L. King transported the claimant to a hospital located in Wickenburg, Arizona, where it was determined that the claimant had sustained a fractured tailbone. The claimant was released from the hospital, and

properly completed an accident/injury report at the Wickenburg depot regarding his personal injury.

The Carrier instructed the claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his slip and fall while handling a matweld rail drill on March 9, 2000. As a result of the formal investigation conducted on May 5, 2000, the Carrier issued the claimant a Level 1 formal reprimand for violating Rule 1.1.2 of the Maintenance of Way Operating Rules (MWOR). Additionally, the Carrier placed the claimant on probation for a period of three years. For the following reasons, the Board cannot sustain the discipline assessed the claimant.

The record indicates that the claimant's fall to the ground was not witnessed by any of the individuals who were working with the claimant at the time. Thus, no eyewitnesses are available to shed light on the cause of the claimant's personal injury. At the investigation, the claimant stated that he had no knowledge regarding the exact cause of his fall and resulting personal injury. The claimant testified, in part, as follows:

. . . . And in preparation for doing that, I was, had gone to where I had set the rail drill and picked it up. And I was facing north and, you know, I was of course walking on top of the ties. And I stepped over the, stepped over the north rail onto the ties on the other side there with both feet. And, you know, I remembered to look and everything, I didn't see nothing. Was checking my footing and everything. And I remember as I was putting my full weight down on one of my feet, seemed like I slipped or something, I don't know. It happened so fast, and the next thing I was on the ground. Fell flat on my butt and the drill landed on top of me. I was still holding it, it landed on top of me. And that was, that was pretty much it.
(Investigation Tr. at 21).

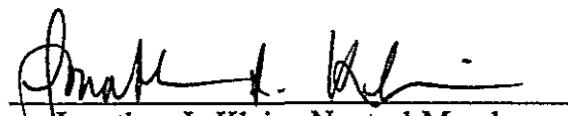
The Board finds that the claimant's testimony indicates that he was attentive while he carried the rail drill over the tracks. The record reveals that the claimant simply fell to the ground as he stepped over the north rail of the track. The Carrier has presented no evidence to rebut the claimant's account of the events immediately prior to his fall. Rule 1.1.2 of the MWOR entitled "Alert and Attentive," provides as follows: "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." The Board finds that the Carrier has failed to satisfy its burden of proof that the claimant was not careful, alert and attentive while he performed his duties on March 9, 2000. Additionally, the Board finds that the Carrier has not demonstrated that the claimant failed to plan his work to avoid injury. The Board determines that the claimant's personal injury was merely the result of an unfortunate accident. Accordingly, the Board concludes that the claim must be sustained.

AWARD

The claim is sustained. The Carrier is directed to comply with this Award within thirty (30) days from the date of issuance.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 25th day of August, 2000.