

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Burlington Northern and Santa Fe Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when on November 21, 2002, Mr. Gary Rockbridge was issued a Level S 10-day record suspension and 1-year probation for allegedly violating Rules 1.1, 1.1.1, 1.1.2, and 1.13 of the Maintenance of Way Operating Rules, Rule S-14.1 of the Maintenance of Way Safety Rules and Rules 1.1.6B and 1.1.9 of the BNSF Engineering Field Manual in conjunction with a machine operated by K. Wartz not maintaining a safe braking distance and coming into contact with machine operated by Mr. Rockbridge.
2. As a consequence of the Carrier's violation referred to in part (1) above, Mr. Rockbridge's record be cleared and he be made whole for any lost wages and unnecessary expense incurred by the Carrier's actions. [Carrier File No. 14-02-0299. Organization File No. 240-1313-0124R.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Gary Rockbridge, entered the Carrier's service on March 24, 1997. He was working as a Trackman in the Maintenance Way Department on November 2, 2001, on Gang RP16, when he was asked to operate a spike reclaimer machine while it was traveling to the yard at Richmond, California, in company with five other on-track machines, because no one else was available or willing to do so. The Claimant agreed to operate the machine.

The Carrier's rules require that when on-track machines are traveling from one location to another (as distinguished from working on the track), they are to maintain a distance of 300 feet apart, except when closing up ("bunching") for movement over short segments of track, such as at road crossings, movable structures, and control points. Machines are to be kept not less than 50 feet apart when bunching at such points.

As the group of six machines approached the yard at Richmond, they began bunching at a road crossing. The Claimant had his machine under control, but had not yet stopped behind the preceding machine. He signaled to the following machine, operated by Machine Operator Kenneth Wartz, that he was stopping. The Claimant changed his attention alternately between watching his approach to the machine ahead of him, and observing the movement of Mr. Wartz's machine behind him. The track at this point was on a descending grade. The Claimant perceived that the following machine was closing in too rapidly and would not be able to stop before colliding with his machine. He also observed Mr. Wartz jumping off his machine. The Claimant attempted to unfasten his seat belt when the collision seemed inevitable, but was unable to get it released before his machine was struck from behind. He suffered an injury described in the record as a lumbar strain.

The Claimant and Mr. Wartz were served a notice of charges and investigation, which was postponed several times because of the Claimant's disability, and finally held on October 24, 2002. The stated purpose of the investigation was:

[T]o determine all facts and circumstances concerning report alleging anchor knocker BNSF X0100402, operated by K. Wartz, did not maintain a safe braking distance and came into contact with spike reclaimer BNSF X8400045, operated by Gary Rockbridge, on November 2, 2001, at approximately 1200 hours at approximately MP 1188.1 on Port Subdivision, which resulted in injury to Machine Operator Gary Rockbridge; . . .

A transcript of testimony taken in the investigation, and attached exhibits is in the record before this Board. On November 21, 2002, the Claimant was notified of the Carrier's decision. It reads, in part, as follows:

This letter will confirm that as a result of formal investigation held on October 24, 2002, concerning anchor knocker BNSF X0100402, operated by K. Wartz, did not maintain a safe braking distance and came into contact with spike reclaimer BNSF X8400045, operated by you, on November 2, 2001, at approximately 1200 hours at approximately MP 1188.1 on Port Subdivision, which resulted in injury to you; you are issued a Level S ten (10) day record suspension for violation of Rules 1.1 (Safety); 1.1.1 (Maintaining a Safe Course); 1.1.2 (Alert and Attentive); and 1.13 (Reporting and Complying with Instructions) of the Maintenance of Way Operating Rules in effect January 31, 1999, including revisions up to April 2, 2000; Rule S-14.1 (Riding on Machines) of the Maintenance of Way Safety Rules in effect January 31, 1999, including revisions up to October 10, 1999; and 1.1.6B (Responsibilities of Individual Roadway Workers) and 1.1.9 (Traveling On-Track Equipment) of BNSF Engineering Instructions Field Manual revised March 1, 2001. Additionally, you have been assigned a probation period of one (1) year. If

you commit another serious rule violation during the tenure of this probation period, you will be subject to dismissal.

The Rules cited in this letter read as follows:

Maintenance of Way Operating Rule (MWOR) 1.1

Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

Empowerment

All employees are empowered and required to refuse to violate any rule within these rules. They must inform the employee in charge if they believe that a rule will be violated. This must be done before the work begins.

Job Safety Briefing

Conduct a job safety briefing with individuals involved:

- Before beginning work
- Before performing new tasks
- When working conditions change

The job safety briefing must include the type of authority or protection in effect.

MWOR 1.1.1

In case of doubt or uncertainty, take the safe course.

MWOR 1.1.2

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.

MWOR 1.13

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

Maintenance of Way Safety Rule S-14.1 (in part)

Ride on machines only if you are the machine operator or are authorized by the manager in charge.

BNSF Engineering Instruction (E.I.) 1.1.6B

Individual roadway workers must:

- Follow BNSF's on-track safety rules and procedures.
- Avoid fouling a track except when necessary to perform their duties.
- Wear high-visibility orange workwear when on or near the track. At night, the workwear must be retro-reflective. (See MWSR Rule S-21.1, "Personal Protective Equipment Requirements.")
- Determine that on-track safety is being provided before fouling a track.
- Refuse any directive to violate an on-track safety rule.
- Notify the employee in charge when making a good faith determination that on-track safety procedures to be applied at the work location do not comply with the MWOR.

E.I. 1.1.9

A. Maintaining Safe Traveling Distance Between Machines

On-track equipment must remain at least 300 feet behind other on-track equipment while traveling to or from a work location. When a job briefing establishes otherwise, machines may be "bunched" to make movements over short segments such as crossings at grade, movable structures, and control points. The job briefing must establish the procedure with all involved. Machines must be at least 50 feet apart during such movements.

B. Slowing or Stopping Machines

When slowing or stopping on-track equipment during travel, the operator must use a radio or hand signals to signal the operator of the following machine.

- If using a radio, the lead operator must ensure that the following operator has received and understood the message transmitted.

- If using hand signals, the lead operator must give a continuous signal until the following operator has acknowledged that the signal was observed and understood.

If machines will be "bunched" when stopped, all employees must remain clear of the track until the entire movement has stopped, unless otherwise instructed by the employee in charge. After stopping, the lead machine operator must do the following:

1. Dismount the machine.
2. Assume a position that is visible to a following machine operator and anyone who could step into the path of the next approaching machine.
3. Spot the following machine using hand signals.

Each successive operator in the consist must follow this procedure to spot the next machine.

The Organization promptly appealed the Carrier's disciplinary decision to its Assistant Director - Labor Relations. The Organization argues that the Claimant did not violate any of the Carrier's rules. He was moving his machine as instructed, preparing to stop in accordance with the rules, had signaled the following machine that he was stopping, and was nevertheless struck from behind. He reported his injury to a supervisory officer, as required by the rules. The Organization believes the discipline is unwarranted, and the Carrier has not borne its burden of proof.

The Carrier rejoins that the Claimant was injured to the degree that he could only perform light duty assignments. Even though he had been instructed by a physician not to perform any strenuous work or lifting, when his automobile broke down on November 8, 2001, the Claimant further injured his back by doing the repair work himself. In doing so, the Carrier argues, he failed to maintain a safe course, violating MWOR 1.1.1; he was not alert and attentive, violating MWOR 1.1.2; and he failed to comply with the instructions of the Medical Professional who placed lifting restrictions on him, violating MWOR 1.13. His overall attitude toward his own safety violated MWOR 1.1. The consequence was further injury to his back. The discipline assessed him was fully warranted, the Carrier argues, and the Organization's claim is therefore denied.

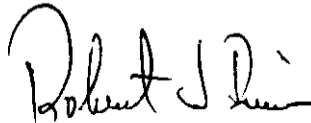
The Board has considered the arguments presented by the Parties. Assistant Roadmaster Phil Heusler, a witness, testified that the Claimant said that his back began to hurt him again when he removed a wheel from his car on November 8, 2001. While there may well be some merit to the argument that he exacerbated his injury when he repaired his own automobile, the Claimant

was not charged nor disciplined for any occurrence on that date. The notice of investigation addressed issues in connection with the collision on November 2, 2001, and the discipline was assessed for the events on November 2, 2001, as a careful reading of the notices quoted on pages 2 and 3, above, clearly indicate. They do not, even by inference, refer to the Claimant's difficulty with his personal vehicle on November 8, 2001. The Board does not believe that when these letters were written, any thought was given to the events on November 8, 2001. The collision was not the result of any act of commission nor omission by the Claimant. He controlled his machine and he signaled the following Machine Operator that he was stopping.

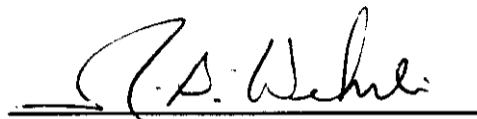
Finding that the Carrier has not sustained its burden of proof in connection with the matters with which the Claimant was charged, the collision on November 2, 2001, there is no need to address any of the other arguments raised by the Parties. The Organization's claim is sustained.

AWARD

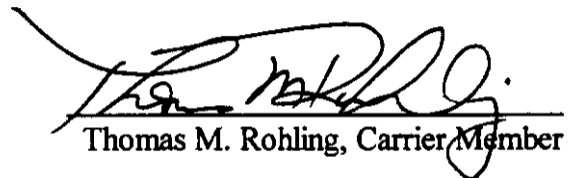
The claim is sustained.



Robert J. Irvin, Neutral Member



R. B. Wehrli, Employee Member



Thomas M. Rohling, Carrier Member

June 25, 2003
Date