

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

v.

BURLINGTON NORTHERN RAILROAD

### STATEMENT OF CLAIM

1. The dismissal of Machine Operator N. N. Ludeman for his alleged failure to provide proper protection on both main tracks at Mile Post 5.4 between Nelson Bennett and Ruston, Washington was arbitrary, unjust and in violation of the Agreement (System File S-P-381/AMWB 88-02-01).
2. The Claimant shall be reinstated with all his dates of seniority unimpaired and he shall be compensated for all lost wages with no loss of vacation or holidays.

### FINDINGS

The Claimant in this case, Mr. Neal Ludeman, was employed by Burlington Northern as a Group 1 Machine Operator. Mr. Ludeman had over twenty-three (23) years of service with the Carrier, and seventeen (17) years of service as a machine operator. On August 6, 1987, at approximately 3 p.m., the Claimant was operating Crane #975507 to unload panels of rail near Milepost 5.4 on the Pacific Third Subdivision between Nelson Bennett and Ruston, Washington. A track permit, issued by the train dispatcher, authorized the crane to occupy a track designated as Main 2, which was adjacent to Main 1.

During the process of unloading the panels, the boom operated by Mr. Ludeman was in the foul of Main 1 and was struck by a UP train. UP 3542 had authority, by signal indication, to occupy that portion of Main 1. There was considerable damage to the UP locomotive and the crane, although there were no fatalities or serious injuries. Due to the nature of the incident, Mr. Ludeman underwent a urinalysis test; he tested positive. Subsequently, Mr. Ludeman was dismissed from service for violation of General Rule A, Rules 913 and 930 of the Rules of the Maintenance of Way Department.

The record of this case contains considerable contradictory testimony as to who was responsible for the crane being in the foul of Main 1. Mr. Ludeman contends that he was doing nothing more than following the directions given by a co-worker. However, it is clear from the record that in the context of uncertainty as to (1) how much time was available to unload panels before the arrival of the next train, and (2) the procedure for the dispatcher to give notification of the approaching train, Mr. Ludeman decided to commence unloading. There is no convincing evidence that Mr. Ludeman was operating the crane under the direction of a foreman or any co-worker. Mr. Ludeman was responsible for the safe operation of the crane. He did not have authority or permission to be in the foul of Main 1. There is substantial evidence from which to conclude that Mr. Ludeman operated the crane in violation of the cited rules.

Mr. Ludeman was accorded a fair and impartial investigation. There is no basis to conclude that any additional witnesses would contribute relevant information concerning the accident. Additionally, in this matter, the Carrier properly applied its policy concerning who is asked to undergo urinalysis testing.



Based upon consideration of the discipline assigned to certain employees involved in this accident and Mr. Ludeman's record of employment, Mr. Ludeman should be returned to service, without back pay and under the conditions specified below. Discipline in this matter has served its purpose.

#### AWARD

Mr. Neal Ludeman shall be returned to employment with the Carrier as a Group 1 Machine Operator without back pay but with seniority restored. This reinstatement is dependent upon: (1) certification by the Carrier that Mr. Ludeman satisfactorily meets the requirements of the Carrier's employee assistance program, and (2) certification by the Carrier that Mr. Ludeman is retested and passes the Carrier's safety rules examination.



Ronald L. Miller  
Chairman and Neutral Member

  
Bruce G. Glover  
Organization Member  
Maxine M. Timberman  
Carrier Member

June 27 1990  
Date