

PUBLIC LAW BOARD NO. 4402

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
TO)
DISPUTE) **BURLINGTON NORTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM

1. The five (5) days suspension imposed upon Laborer V. K. McCann for alleged "... violation of Safety Rules and General Rules of Burlington Northern Railroad, No's, 336 B, 336 C, 336, 338 and 346" was without just and sufficient cause, an abuse of discretion and on the basis of unproven charges (System File #7 Gr./GMWA 86-12-22E).
2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

As a result of charges dated June 12, 1986, investigation held on June 17, 1986 and by letter dated July 11, 1986, Claimant, a section laborer with a service date of April 1, 1974, was suspended for five days for failing to operate a Carrier vehicle in a safe manner resulting in an accident with a private vehicle on June 3, 1986.

On June 3, 1986 Claimant was driving a Carrier truck on St. Joseph Avenue in St. Joseph, Missouri at a point where two southbound lanes merge into one lane. While attempting to merge his vehicle into the main lane, Claimant struck another vehicle traveling in the main lane. As a result of the collision, Claimant was issued a traffic citation for "inattention". The instant discipline followed.

Substantial evidence exists in the record to support the Carrier's determination that Claimant did not operate his vehicle in a safe manner. Claimant testified:

- Q. Can you relate for us, to us the circumstances and events surrounding that accident please?
- A. While I was driving, the highway road merged, checked my mirrors and blind spot, mirrors, he was not visible when I merged and the rear tire came in contact with rear fender on

the right hand side of the truck.

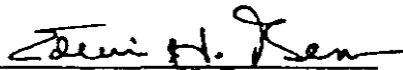
Thus, the record adequately shows that Claimant changed lanes and struck a car traveling in the other lane. Nothing in the record sufficiently shows why Claimant could not have seen the vehicle in the other lane and avoided the collision. Under the circumstances, we cannot say that a five day suspension was either arbitrary or capricious.

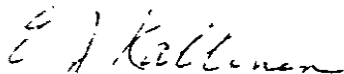
We note that a copy of the transcript of the investigation was not furnished to the Organization in an expeditious fashion. The need for timely providing a copy of the transcript is fundamental to the Organization's ability to adequately and timely prepare its positions. While no prejudice was suffered by the delay in this case, similar action in the future may well require that delay be considered as a basis for granting relief.

We have considered the other arguments made by the Organization and find them insufficient to change the result.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

Denver, Colorado
August 11, 1989