

Award No. 6
Case No. 6

PUBLIC LAW BOARD NO. 5696

PARTIES
TO
DISPUTE:

Burlington Northern Railroad Company

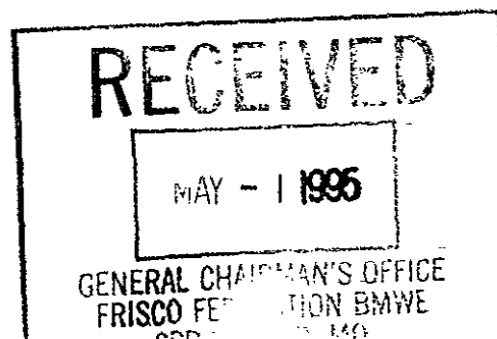
AND

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline of a two-week suspension imposed upon J.R. Taylor, D.J. Taylor, J.C. Howard, and L.F. Box for alleged responsibility for actions resulting in injury to Mr. Taylor, was unwarranted, without just and sufficient cause and in violation of the agreement.
- (2) As a consequence of the violation of the Agreement referred to above, the three Claimants' records shall be cleared of the charges leveled against them and shall be made whole for all wage loss suffered in this suspension.



FINDINGS

Upon the whole record the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The Claimants here are all long-service employees who had been operating in a gang for many years. The particular incident involved was an accident which occurred on January 20, 1994 at approximately 4:10 P.M., when a bucket, which was attached to a boom on a backhoe, fell on Mr. J.R. Taylor, injuring him.

Carrier's position in this matter is that the Claimants were not operating in a safe manner and should be disciplined for their violation of various Carrier safety rules. It is Carrier's belief that all members of the gang had been instructed in terms of safety, and had attended at least nine safety meetings over the previous two-year period. Carrier believes that safety obligations are paramount, and the discipline in this instance was well-established and deserved.

Petitioner believes that the bucket in question was worn out, and furthermore, the options that the employees had of fastening the bucket to the boom by a chain rather than by the bolt is questionable, at best. Furthermore, it is the

Organization's contention that the crew were not trained in handling equipment such as the bucket involved here, and despite lack of training, there is no indication that they operated in an unsafe manner.


As the Board has examined the transcript of this matter, it is clear that the equipment in question had been rented from a contractor and was not in good shape. In fact, the particular bucket was defective in that it did not have the hooks which were normally used in fastening the bucket to the boom. This equipment was leased by the roadmaster for the use of the gang. The investigation also indicates, without significant rebuttal, that the alternative method of fastening the bucket to the boom, which Carrier believes would have been a more safe method, might not necessarily have been a safer method. There was also the possibility of an accident even with that method of fastening the bucket to the boom. More significantly, the men in question had no training whatever in handling equipment such as this, in spite of the many safety meetings that they had attended. There is no evidence whatever to indicate that the men were operating in an unsafe manner. In fact, they were operating with equipment which was defective and had been leased by Carrier, and were operating without instructions as to the appropriate manner of fastening a bucket to the boom. For the reasons indicated, the discipline of the two-week suspension would seem to be wholly inappropriate, shall be reduced to a written reprimand, and the employees should be made whole for all losses sustained.

AWARD

The discipline was inappropriate and shall be reduced to a written reprimand and the employees shall be made whole for all losses sustained.

ORDER

Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
April 27, 1995

