

B-24383

Award No. 9
Case No. 9

PUBLIC LAW BOARD NO. 5696

PARTIES Burlington Northern Railroad Company
TO
DISPUTE:

AND

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline of censure imposed upon Mr. H.L. Campbell was without foundation and without just and sufficient cause.
- (2) As a result of Carrier's improper conclusion with respect to a contract violation on the part of Claimant, his record shall be cleared of the charges and the censure shall be removed from his record forthwith.

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.

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Claimant was found to be operating in an unsafe manner due to the breaking of a rail shearer while in use by the him on May 15, 1994. The record indicates while operating the shearer on that date, the handle broke and it resulted in a major bruise to Claimant's jaw. The evidence further indicates that there was undoubtedly a prio repair of the handle in question and that what gave way, causing the accident, was a weld to repair this tool.

Carrier insists that Claimant indicated that he was aware of the difficult and potential danger of using the equipment as long as a week prior to the accident. However, because his foreman indicated he should use it, he complied and did nothing about it in spite of his concern about the safety element. Thus, from Carrier's standpoint, Claimant did not take into consideration his own responsibility for safety in the course of his activities. The overriding principals of safety govern in this instance, and Claimant failed in his responsibility in that area, according to Carrier. Petitioner believes that the fact is that he followed orders and was unable to convince his foreman that the equipment, indeed, was defective. Therefore, the Organization believes that Claimant had no control over his situation whatever.

A careful perusal of the transcript of the investigation of this matter indicates that clearly Mr. Campbell was concerned about the safety of the equipment he was using. Carrier is correct in that he did not assert his own view that the equipment was unsafe and refuse to use it, which was his prerogative under clearly stated Carrier safety policies. From this standpoint, Carrier was entirely correct in imposing a censure on Claimant, who used what he considered to be unsafe equipment instead of refusing to use same. This is the type of safety violation which an individual can indeed control, and Claimant failed to do so in this instance. For the reasons indicated, the Board believes that the claim has no merit, and should be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
May 5, 1995