

PUBLIC LAW BOARD NO. 5814

Case No. 23

Award No. 23

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer J. D. McClintic for removal of discipline (30 day suspension) from his personal record and that he be made whole for all lost time.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

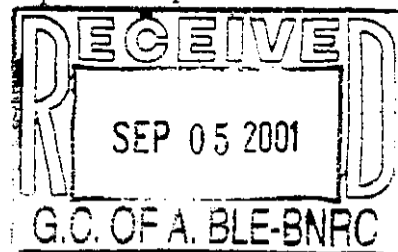
That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On October 16, 1995, Claimant was working as the Engineer of Road Switcher 52488 at Eugene, Oregon. After the Claimant started the engine on unit BN2187, he used one hand to release the ratchet-type handbrake on the locomotive. The handbrake would not release so he used two hands to release it. About 15 or 20 minutes later the Claimant's left elbow began to hurt. He finished his trip and completed an accident report the next day, October 17, 1995. He was off work three days because of the injury.

Several Carrier officers reenacted the incident with the Claimant. They concluded from this reenactment that the Claimant improperly released the handbrake since he was not facing the handbrake when he released it. The Claimant could not recall whether he was facing the handbrake when he released it. He said that he had experienced problems releasing handbrake on this locomotive prior to October 16, 1995.



The Claimant was notified to attend an investigation to ascertain the facts and determine responsibility, if any, for (1) his alleged accident prone behavior and (2) his alleged improper technique of releasing the handbrake on locomotive BN2187 on October 16, 1995. The investigation was held on February 2 and 7, 1996. On February 27, 1996, the Carrier advised the Claimant that both charges were sustained and that he was being assessed a 30 day suspension as a result.

In this Board's opinion, neither charge for which the Claimant was disciplined was sustained by substantial evidence. It is noteworthy that the Carrier has not issued any rule or procedure prescribing how ratchet-type handbrakes on locomotives are to be applied and released. Nor have employees been trained on the proper techniques for releasing these brakes. There is no evidence in the record that employees have been instructed to face the handbrake when releasing it. And in any event, the Claimant could not recall whether or not he was facing the handbrake when he released it.

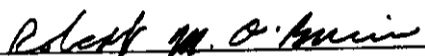
The Carrier has not convinced this Board that the Claimant was negligent or careless when he injured his elbow while releasing the handbrake on locomotive BN2187 on October 16, 1995.

Nor has the Carrier persuaded this Board that the Claimant was accident prone. According to the Claimant's service record, he incurred five reportable injuries between 1981 and 1995, including the injury on October 16, 1995. There is no evidence that he was found personally responsible for any of these injuries. Most of these injuries were minor and resulted in bruises to the Claimant.

For all the foregoing reasons, the discipline assessed the Claimant was unwarranted. It must therefore be expunged from his record and he must be made whole for all time lost as a result of this unjustified discipline.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member

Dated: 8/24/01