

PUBLIC LAW BOARD NO. 5814

Case No. 33
Award No. 33

PARTIES TO DISPUTE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Engineer W. C. Hansen for removal of discipline assessed him on November 22, 1999, and that he be made whole for all lost wages and benefits.

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 31, 1999, Claimant was the Engineer of Yard Job ALN 302 at Alliance, Nebraska. He went on duty at 10:59 p.m. At around 11:30 P.M. the Claimant went to the yard to inspect his locomotive. He placed a can of soda on the sandbox then entered the cab. After placing his sack down, the Claimant was standing in the doorway on the fireman's side of the locomotive retrieving his soda. While he was standing in the doorway, a gust of wind slammed the cab door shut. The Claimant fell backwards over the front seat in the locomotive and braced himself to avoid falling to the floor.

At around 4:30 a.m. on November 1, 1999, the Claimant felt pain in his left shoulder so he contacted Trainmaster Boltin. The Claimant was transported to the Box Butte General Hospital where he was treated and released. He was diagnosed with a strained shoulder.

On November 4, 1999, the Claimant was notified to attend an investigation to ascertain the facts and to determine his responsibility, if any, for the personal injury he sustained to his shoulder on October 31, 1999. The investigation was held on November 22, 1999. On December 22, 1999, the Claimant was issued a Level 2 suspension (10 days) for his putative violation of Rule 1.1.2 of the Carrier's General Code of Operating Rules and Rule 1.5.2 of the TY&E Safety Supplement. He was also given three years' probation for these violations.

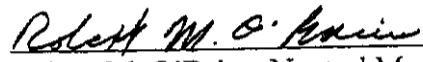
The evidence developed at the November 22, 1999, investigation convinces this Board that the Claimant was alert and attentive to his duties when he injured his shoulder. The Claimant did not cause this personal injury, in our view. Rather, it was caused by an act of nature when a strong gust of wind slammed the locomotive door shut as the Claimant was standing in the doorway retrieving his soda from the sandbox. In our opinion, there is nothing the Claimant could have reasonably done to prevent his injury.

The Carrier contends that if the Claimant had been better positioned while retrieving his soda he would not have been injured. However, this is mere conjecture. The Claimant stated that he was unsure exactly where his feet were when he was standing in the doorway on the fireman's side of the locomotive. There is simply no evidence that he was off balance while he was retrieving his soda from the sandbox.

Based on the record before us, this Board finds that the Claimant did not violate Rule 1.1.2 of the Carrier's General Code of Operating Rules or Rule 1.5.2 of the TY&E Safety Supplement as charged by the Carrier. Accordingly, the discipline assessed the Claimant for these violations must be removed from his record and he must be made whole for all lost wages and benefits he incurred as a result of this unwarranted 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: 12-2-02