PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 183

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on January 11, 2001, Mr. C. R. Vasquez was removed from service and subsequently dismissed from service on March 13, 2001 for allegedly violating Maintenance of Way Operating Rules 1.1.2, 6.50, 6.50.1 and 6.5 in conjunction with his allegedly improperly operating a ballast regulator that struck the rear of a freight train at about 12:06 PM on January 11, 2001, damaging both the ballast regulator and the rear car on the freight train.

2. As a consequence of the Carrier's violation referred to above Mr. Vasquez shall be returned to service, the discipline shall be removed from Mr. Vasquez's personal record and he shall be compensated for all wages lost, if any, in accordance with the Agreement.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was operating a ballast machine. On a clear day he rear-ended a freight train stopped ahead of him damaging the ballast machine beyond repair, suffering only minor injuries.

The investigation established that Claimant had a sight clearance of

approximately 1100 feet, and that at about the 460 foot distance he applied the brakes only to rear-end the train.

The ballast regulator was examined and no mechanical default was found that would have precluded Claimant from stopping the unit shy of rear-ending the train.

The Carrier ran tests with another unit, with the brake set with the same clearance as the unit that was damaged, and in four different settings, stopped less than half the distance to the stopped train. Claimant had no real explanation as to what happened other than when he applied the brakes, it seemed like the unit picked up speed rather than stopping, and that he was not aware the train would stop.

Testimony was that if the brakes lock on the wheels and the wheels slide, it can seem like the unit is gaining speed, but no shiny spots were on either the rail or the brake pads that would indicate locked wheels occurred and the unit skidded ahead without stopping.

Claimant was tested for drugs and alcohol, but as of the date of the investigation, the Carrier had not been notified of the results, but as of the date Claimant was dismissed (March 13, 2001) the Carrier would have surely known and if Claimant had a prohibitive drug or alcohol in his system, it would have taken further action.

Under the circumstances, with no obvious mechanical problem with the ballast machine and a dry, clear day with visibility about 1100 feet, Claimant simply was negligent in the operating of the unit.

Claimant's work record is not squeaky clean, having 3 disciplinary incidents since he hired out in June, 1993, nevertheless, it is not that serious that precludes reinstatement.

It is this Board's determination that Claimant is to have all of his seniority reinstated, but there will be no pay for time lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: Nov. 26, 2001