

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 43

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE.

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level 1 Formal Reprimand for Eastern Region, Section Foreman Gordan K. Kress on his personal file was unjust.
2. That the Carrier now rescind their decision and expunge all discipline and transcripts resulting from an Investigation held 10:00 a.m., May 23, 1997 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, a Level 1 Formal Reprimand is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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.

While driving a Company van, Claimant side-swiped a switch stand causing damage to the van. For this action an Investigation was held, following which the Claimant was advised as follows:

"This letter will confirm that as a result of formal investigation on Friday May 23, 1997, concerning the collision involving BNSF Company vehicle AT 95602 which you were driving with switch stand in Fort Madison Yard, you are issued a Level 1 - Formal Reprimand, for violation of Safety Rules and General Responsibilities for All Employees of the Burlington Northern Santa Fe Rules S-12.1.1 and S-1.2.3.

In addition you must develop a written action plan with your supervisor which is designed to solve problems and prevent future occurrences. I am committed to supporting your efforts; and in return, request your cooperation and commitment. Please do not hesitate to contact me if you need assistance."

There is no controversy as to what happened. The Company van Claimant was driving did suffer damage when he side-swiped a standing switch.

Claimant contends the van's radio was not working properly, and when he was making a u-turn over the track, a loud noise came through the malfunctioning radio. Claimant then stated that he looked down at the radio and at that moment he side-swiped the switch stand.

Obviously, the unexpected noise from the malfunctioning radio startled Claimant causing him to alter his concentration from driving to the noise at the precise moment he was completing the u-turn and should have been straightening out the wheels of the van.

In that one instance, Claimant did not have full control of the van, and he was negligent in that instance, when his lack of control resulted in damage to the Company van.

Even though Claimant's work history reflects only one instance of Carrier imposing upon Claimant the disciplinary procedures (which occurred over ten years ago), and does also reflect a letter of accommodation for spotting a run through switch in the Fort Madison Yards that could have resulted in untold damage had it not been reported, the formal written reprimand will be upheld by this Board. Discipline in this industry is two-fold. It serves as a wake up call to the individual of the continuing need to comply with the rules and/or as a warning to others of the need to comply.

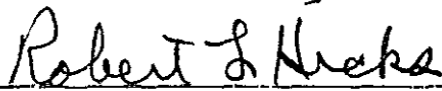
In this instance, it serves as a reminder to Claimant of the continuing need to be alert and to follow the Rules at all times. The claim will be denied.

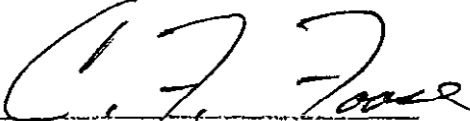
AWARD

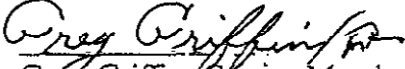
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


C. F. Foose, Labor Member


Greg Griffin, Carrier Member

Dated