

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 77

(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 S five (5) day Suspension for Southern Region, T. C. McDaniel from service was unjust.
2. That the Carrier now rescinds their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 3:00 p.m. May 15, 1998 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, suspension from service 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.

Claimant's hy-railer derailed at a road crossing whereby he raised the wheels and proceeded on down the road.

Later in the day, he had assistance in placing the hy-railer back on track. The employee assisting suffered a fractured finger when attempting to lower the hy-rail wheel into place as he was assisting at the left front rigging which had been damaged.

The Roadmaster, upon being informed of the incident, held a reenactment of the incident and upon inspecting the equipment, found the "dog" on the left front that is used to lock the wheels into place was 120" off center. The Roadmaster further testified that the "dog" turned as it was,

precluded the operator from using a bar to lock the wheels in place. It was at the time of the reenactment that Claimant advised the Roadmaster of the derailment at the road crossing.

For Claimant's failure to report the derailment of the hy-railer and the resulting damage thereto that concluded with an injury to a fellow employee, an Investigation was scheduled following which Claimant was assessed a five day actual suspension from service.

Testimony at the Investigation clearly pinpointed the damage to the hy-railer that Claimant said he did not see when he derailed. The Roadmaster stated that when Claimant derailed at a road crossing, then raised the hy-railer wheels to motor on down the roadway, it would have been difficult to lock up the left front wheel, and at that time the damage would be noticeable.

This Board finds that the evidence of Claimant's negligence in reporting the incident and the obvious damage was clearly established at the investigation, but three of the four rules he has been charged with violating are not applicable to the incident. True, he should have reported and tagged defective equipment which was not done, but Claimant's violation was in his negligent inspection of the hy-railer after the derailment. This negligence contributed to the injury sustained by another employee, but he was not charged with negligence. Under these circumstances, a violation was proven and there are sufficient facts to sustain some discipline, but not an actual suspension. In lieu, the discipline is to be reduced to a five day deferred suspension with the probation period commencing with the adoption of this Award. Claimant is to be paid for all time lost pursuant to the practice on the property.

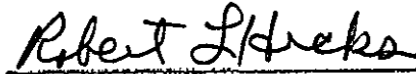
AWARD

Claim sustained in accordance with the Findings.

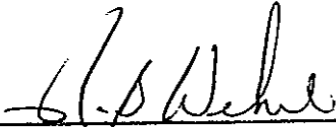
ORDER

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: Aug 11, 1978