

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 78

(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 with one-year probation for Southern Region, B. L. Skiles 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 9:00 am. 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, 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.

In Case No. 77, a hy-railer was damaged in a derailment and it went unreported. In this case, Claimant, shortly after the derailment, was assisting the operator of that hy-railer in positioning it on the tracks. In doing so, the left front wheel of the hy-railer dropped unexpectedly, fracturing Claimant's finger.

Claimant contended that he did not notice that the hy-railer wheel had not dropped as his view was somewhat obscured by a screen on the front of the vehicle, and because he had no knowledge of the fact that the vehicle had derailed shortly before, he was not anticipating any problem in positioning the hy-railer wheel.

Claimant, an experienced operator of hy-rail vehicles, was the victim of an unexpected, perhaps unusual incident that resulted in his first injury since he commenced service in February, 1979. In fact, in 1991, an entry in his work record reflected a quality performance citation for being injury free for eleven years.

It is understood that safety is every employee's responsibility, and the more employees you have thinking and working safely, the safer the operation will be, but in this instance, it is obvious that Claimant trusted his Supervisor's experience and proceeded to assist in lowering the hy-railer wheel without knowing the equipment shortly before this had derailed.

Under the circumstances prevalent in this incident, and in consideration of Claimant's previous clear, exemplary record, taking into consideration his citation for quality performance, Claimant's record is to be cleared of any reference to this matter.

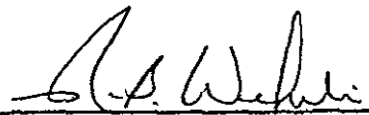
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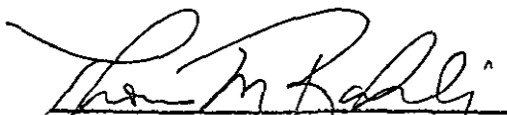
Claim sustained.

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, 1998