

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on May 8, 1998, the Carrier issued a Level S, suspension of forty-five (45) days to Mr. S.E. Gonzales for allegedly violation of Rules 1.1, 1.1.1, 1.1.2, and 6.50.2 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged failure to stop at a road crossing at Merced, CA, on March 17, 1998, resulting in Tamper 6700, BNX5400254 striking an automobile.
2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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, while in control of a regulator, broadsided a pickup truck at a crossing. No serious injuries occurred, but the regulator and the truck suffered damage.

Claimant, after the investigation, was assessed a 45 day suspension from service.

The facts as adduced by the Board are as follows. The regulator was the third and trailing piece of equipment moving to a new location. The first unit was of sufficient weight that it activated the crossing signal and the other two units bunched up behind the lead unit to move through the crossing, hopefully while the crossing gates were still down. (Neither the second or third unit were of sufficient weight to activate crossing gates.)

In this instance, the gates raised after Claimant's unit was about ten feet into the

crossing. The pickup truck either did not see the regulator or thought it could beat it as it moved onto the crossing and was broadsided as Claimant was unable to stop the regulator to prevent the accident.

Weather was not a factor as it was a clear, sunny day. The only conclusion is the negligence of the pickup driver. It is noted on the police report that the pickup driver:

"...was in violation of section 22451(A)(2) VC (a vehicle shall not proceed across the tracks when a clearly visible train or equipment is approaching...."

But even though the pickup driver was in the wrong, does this exonerate Claimant?

It is true that the three unit equipment train had successfully traversed four crossings prior to this incident, but not all four were protected by crossing gates and/or lights. Claimant did see the truck stopped at the gate that was going up, but then he was ten feet into the crossing.

When it comes to crossings, the operator is obligated to use his best judgment in proceeding. He did have radio contact with the preceding units. He stated he thought he could make it across the road crossing while the gates were still down, but this did not happen. Just as the truck driver could be conceived as trying to beat the unit at the crossing, Claimant was trying to clear the crossing before the gates went up.

With the number of railroad crossing accidents that happen when the train broadsides the car or the car runs into the side of the train, one can never be too cautious. Claimant should have stopped, and if needed, radioed ahead for someone to protect his crossing the road. Incidents such as happened here, unfortunately, are not rare. Fortunately, other than damaged equipment, no one was seriously hurt.

A review of Claimant's record finds this is his second brush with the disciplinary process, and although he just cleared the one year probationary period for his first encounter,

that matter was not safety related. Under the circumstances, the Board finds 30 days would have been an adequate assessment of discipline as the pickup truck driver contributed greatly to the accident.

Claimant is to be paid for all time lost in excess of thirty days in accordance with the practice in effect 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: November 2, 1998