

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(Burlington Northern Santa Fe Railway (former St. Louis-
San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when it unjustly suspended Mr. H. W. Brower from service for ten days beginning on May 28, 1997, for allegedly allowing on-track equipment under his jurisdiction to be operated in a manner that resulted in a collision with a stationary on-track bridge truck near bridge number 299-9 on the Monett Subdivision.
2. As a consequence of the Carrier's violation referred to above, the discipline should be removed from the Claimant's personal record, and he shall be compensated for all wages lost.

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, on a damp day, was riding as a passenger in a contractor's hy-railer which was pulling a trailer grossing approximately 64,000 lbs. when it collided with a B&B vehicle. Because Carrier believed Claimant had some responsibility for the incident, the disciplinary process was commenced with Claimant being assessed a ten day suspension.

After reviewing the testimony, it is the Findings of this Board, that the main cause of the incident were those in charge who contracted the scrap rail retrieval operation with a contractor whose equipment lacked the necessary safety features, such as brakes. The contractor's trailer which was built by the contractor, lacked a braking system. The hy-railer of the contractor lacked sufficient tension on the drive wheels producing a braking system with less stopping ability than Carrier hy-railers.

When coupling the contractor's equipment with the track conditions - wet and greased curve,

it is no wonder that it could not stop within 620 feet space from the completion of the curve to the point of the B&B truck. Significantly, after this incident, the contractor installed brakes on the trailer and the Carrier banned the contractor's employee, the one driving the hy-railer at the time of the incident, from its property. Then a review of Claimant's record shows that in twenty-two plus years of service (at the time of this incident) he has never been the subject of an investigation. His record is absolutely pristine.


Taking into consideration all the factors evident in this case, it is the Board's Findings that the Carrier failed to furnish substantial evidence of Claimant's guilt for the charges assessed. He is to be paid for all time lost in accordance with the practice on the property, and any and all traces of the incident are to be removed from his record.

AWARD

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, Neutral Member & Chairman
Public Law Board 6103

Dated: _____

