

## Public Law Board No. 6204

### **Parties to Dispute**

|                                   |   |                |
|-----------------------------------|---|----------------|
| Brotherhood of Maintenance of Way | ) |                |
| Employees                         | ) |                |
|                                   | ) |                |
| vs                                | ) | Case 6/Award 6 |
|                                   | ) |                |
| Burlington Northern Santa Fe      | ) |                |

### **Statement of Claim**

1. The five (5) day suspension assessed Machine Operator S. C. Jarmin for his alleged failure to plan his work to avoid an injury to another employee on May 30, 1997 was without just and sufficient cause and in violation of the Agreement.
2. That the Claimant's record be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

### **Background**

The Claimant was advised, along with three (3) fellow employees, including the Assistant Foreman of the group he was assigned to, to attend an investigation in order to determine facts and place responsibility, if any, in connection with alleged failure to plan work so as to avoid an injury sustained by the Assistant Foreman of the group at approximately 1:00 PM on Friday, May 30, 1997. The incident occurred near MP 63 in Nacco, Wyoming. The Claimant's group was No. 2 headquartered out of Douglas, Wyoming which is assigned to Carrier's track Gang CG10. The investigation was held at Gillette, Wyoming. Thereafter the Claimant was advised that he had been found guilty as charged. He was assessed a five (5) suspension. The Claimant was advised that his suspension was to begin on July 23, 1997 and conclude on July 27, 1997. His fellow employees were also assessed various disciplines which are not, however, the subject-matter of this case. The discipline assessed the Claimant was appealed by the Organization and conferenced

on property. Absent settlement of the claim it was docketed before this Board for final adjudication.

### **Discussion & Findings**

According to the record the following happened at or about noon and in the afternoon of May 30, 1997 when the Claimant and other Machine Operators, a number of Laborers, and the Assistant Foreman were working on a track dismantling operation near Nacco, Wyoming. Most of the group took their lunch at noon. During lunch Machine Operators Paulson and Hagen, operating front end loaders, pulled a 1,500 foot rail to a pick up point along the track bed. They were pulling the rail from the west end. After lunch Assistant Foreman Hoyle was working with Laborers and the Claimant: they were picking up concrete ties and stacking them while the two Machine Operators continued to finish the work with the rail. Operators Paulson and Hagen were pulling the rail through the area where Hoyle, the Claimant and the Laborers were working. When the two Operators were finished pulling the rail it was located about 500 feet to the east of where Hoyle was working, and about 1000 to the west of his work location. After lunch the Claimant to this case, who also operated a front end loader, called Operator Paulson on the gang's only two-way radio and concluded from Paulson's response that the rail pulling was finished. This was the information which the Claimant passed on to Assistant Foreman Hoyle who was working with the men, and the Claimant's loader, picking up and stacking the concrete ties along the track. Assistant Foreman Hoyle was standing near the rail which had just been pulled as he continued his work with the men. Without warning the rail turned on its side toward Hoyle and landed on his foot. Hoyle sustained an injury, albeit not a serious one. No bones were broken. It was this incident which is the genesis of the instant case before the Board.

Subsequent investigation determined, according to the Carrier's witnesses, who were two Road masters, that the cause of the rail turning over was the following. One of the loaders, which had been straddling the rail, made the rail flip when its Operator tried to maneuver the machine over the rail. It is immaterial to this case which one of the Operators allegedly did this. But what allegedly happened, according to this hypothesis, is that the front tire of the loader in question jumped the rail but the loader's back tire, with its larger tread, got caught on the rail and the loader was of sufficient weight to have turned the rail over, backwards, as the machine moved forward in its attempt to jump the rail. The two Road masters who did the investigation were not present when the incident happened but they deduced that this was what caused the accident because of tire tracks, etc. near the overturned rail. According to the Organization, on the other hand, the cause of the rail being turned over was the actions of a speed swing operator by the name of Jensen who did not even appear at the investigation. The Carrier disputes this latter explanation during the handling of this claim on property and the Organization disputes the Carrier's explanation of what caused the rail to turn over. According to the Organization, the tire tracks on the rail, basis of the the Carrier's hypothesis, could have been put there before the rail had ever been moved.

The record is unclear on what exactly made the rail turn over and land on the Assistant Foreman's foot. The rail could have turned over as a result of either explanation offered in the record as outlined in the foregoing. In order to determine the merits of the case involving the instant Claimant, however, the Board concludes that the answer to the question of what caused the rail to turn over is not needed. The only thing that is needed is an explanation of the extent, if any, the Claimant was responsible for the injury to Assistant Foreman Hoyle when the rail landed

on his foot. The Claimant did tell Hoyle when the operation of moving the rail was finished. And on this point he was correct. The rail was not pulled any more by either Machinist Paulson or Hagen after the Claimant informed Hoyle that the operation was finished. If the rail was turned over by speed swing operator Jensen, reasonable minds would conclude that the Claimant apparently did not know this or he would have informed Hoyle about Jensen before he told Hoyle that the maneuver of pulling the rail was finished. On the other hand, if the rail was turned over by either of the two Machine Operators who had been pulling the rail by their jumping it with their tractors after they finished pulling it where they wanted it, and if this was the real cause of the Assistant Foreman's injury, that would have been beyond the control of the Claimant. He had no way of knowing that either of the operators were going to try and jump the rail without taking some basic precautions to block it somehow so that it would not roll over. Obviously, there is also some responsibility which the Assistant Foreman himself needs to bear for the accident. He apparently was not watching out.

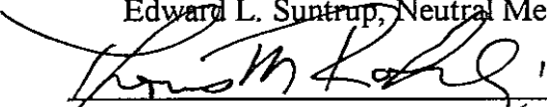
A review of the full record of this case, as it exists, warrants the reasonable conclusion that the Claimant was found guilty of other people's actions which were beyond his control. On merits, the claim will be sustained.

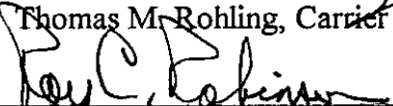
The Claimant shall be paid for the all time lost for the five (5) day suspension he served. The Claimant's record shall also be amended to reflect the conclusion by the Board in this Award and the five (5) day suspension shall be removed from the Claimant's record.

**Award**

The claim is sustained in accordance with the Findings. All monies due the Claimant by the Carrier shall be paid to him within thirty (30) days of the date of this Award.

  
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Edward L. Suntrup, Neutral Member

  
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Thomas M. Rohling, Carrier Member

  
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Roy C. Robinson, Employee Member

Date: December 15, 1999