

In the Matter of the Arbitration Between:

BURLINGTON NORTHERN SANTA FE

and

Case No. 14

Claim of R. L. Quattlebaum

Formal Reprimand - Failure
to Follow Backhoe

Operation Procedures

BROTHERHOOD OF MAINTENANCE OF WAY

EMPLOYERS DIVISION - IBT

STATEMENT OF CLAIM: Claim on behalf of Machine Operator R. L. Quattlebaum requesting removal of the Formal Reprimand with a one-year review period from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee, within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein.

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Maintenance of Way craft. The Board makes the following additional findings.

Claimant is 52 years old and has worked for the Carrier since August 14, 1978. On January 26, 2012, Claimant was operating his backhoe at MP 403.3 on the Dalhart Subdivision at the Helena Chemical grain dump. At approximately 3:20 p.m., Claimant drove the backhoe over a piece of plywood which was covering a steel hopper and concrete base. The owner of the grain dump provided an unsigned and undated statement, admitted at the investigation, stating that the plywood was not meant to support the weight of a backhoe and that, when Claimant ran over it, he caused damage to the concrete base. Claimant admitted that he did not stop to actually look at what was under the plywood.

The Carrier convened an investigation at which the above evidence was adduced. Based on the record, the Carrier found Claimant in violation of MWOR 1.1.2 (Alert and Attentive) and assessed him a formal reprimand.

The Organization protested the discipline, which the Carrier denied on appeal. The Claim was progressed on the property on an expedited basis, up to and including the highest designated official, but without resolution. The Organization invoked

arbitration, and the dispute was presented to this Board for resolution.

POSITIONS OF THE PARTIES: The Carrier argues that it met its burdens to prove Claimant's violation of the Rules and the appropriateness of the penalty. It asserts that the facts and testimony presented at the investigation make it clear that Claimant drove the backhoe over a piece of plywood which was covering a dump pit and that, by doing so, he damaged the concrete base and violated the rules. The Carrier points out that Claimant admitted that he did not stop to see what was under the plywood. It maintains that various arbitration boards have held that, when there is an admission of guilt, there is no need for further proof and that the only remaining question is the degree of discipline.

As to the penalty, BNSF asserts that the discipline imposed is appropriate and that leniency is not in the Board's discretion. It asserts that Claimant was appropriately disciplined and is, in fact, lenient.

The Carrier urges that the claim be denied as without merit.

The Organization argues that the Carrier failed to prove the violation and failed to establish the appropriateness of the penalty. Although it acknowledges that the incident occurred, it contends that there is no evidence of any rule violation. The Organization asserts, citing the statement of a named backhoe operator who has worked in and around the Dalhart Subdivision for 36 years, that there has never been any instruction that driving over grain dumps was unsafe, even with bigger and heavier equipment or vehicles than the one used by Claimant.

The Organization further argues that the Carrier did not corroborate the accuracy or validity of the unsigned and undated document which purports to be from the company that owns the dump. It points out that, although the grain dump was in obvious disrepair, there were no warning signs, flagging tape or barriers to prevent vehicle or equipment traffic from driving or parking on the steel-reinforced concrete dumps. It maintains that, if the private owner had exercised due diligence and protected the location, the incident would never have happened. The Organization contends, in addition, that the plywood which broke through appeared to be nothing more than debris that can be found at locations in and around the Carrier's tracks across the country and that there was nothing at the location of the incident that gave any cause for concern or alarm.

The Organization argues that the rule which Claimant was charged with violating - "Employees must be careful to prevent

injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury" - deals with injuries. It asserts that the record demonstrates that no injuries with respect to this incident were reported and that there was, therefore, no cause for any further scrutiny of the incident. It maintains that any discipline rendered is arbitrary, excessive and unwarranted.

The Organization urges that the Claim be sustained, that Claimant's Formal Reprimand with a one-year review period be removed from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

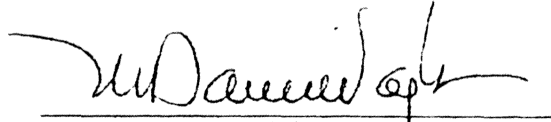
DISCUSSION AND ANALYSIS: It was the burden of the Carrier to establish, by substantial evidence considered on the record as a whole that Claimant violated the Rules and that the penalty assessed was appropriate. The Board concludes that the Carrier met its burdens.

Rule 1.1.2 requires employees to "be careful to prevent injuring themselves or others" and that they "be alert and attentive when performing their duties." The Organization contends that the rule is intended to deal with injuries and that, since Claimant's action did not result in his or someone else's injury, there was no need to investigate the matter. The Board is not persuaded. Claimant violated both portions of the Rule. Although no one was injured, that was not the result of anything Claimant did but pure luck. Claimant admitted that he saw the plywood and did not stop to see what was under it. Furthermore, he had no way of knowing whether the plywood was strong enough to support the backhoe. Claimant was not alert and attentive to his duties. He put himself at risk of injury and of damaging Carrier and Customer property. Clearly, his actions violated the rule and warranted discipline.

Given the nature and circumstances of Claimant's violation, the Board concludes that the penalty of a formal reprimand was appropriate. The Award so reflects.

AWARD: The Carrier met its burdens to prove Claimant guilty of the charges and to prove his reprimand to have been an appropriate penalty. The claim is denied.

Dated this 9th day of May, 2014.


M. David Vaughn,
Neutral Member


Carrier Member
Ms. Samantha Rogers


Employee Member
Mr. David Tanner