

PUBLIC LAW BOARD NO. 7048

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY  
(EMPLOYEES DIVISION  
(  
(THE BURLINGTON NORTHERN SANTA FE RAILWAY  
(COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on November 8, 2005 when Claimant, J. M. Haley, was assessed a Level S 30-day Record Suspension with 3 years probation for an alleged violation of Maintenance of Way Operating Rules 1.1-Safety and 1.12-Alert and Attentive and Engineering Instructions 1.10-Lockout/Tagout, 1.10.1-Definitions, 1.10-Lockout/Tagout, 1.10.1-Definitions, 1.10.2-General Requirements, and 1.10.3-Energy Isolating Procedure when claimant failed to follow lockout/tagout procedures and sustained an injury after reaching into the auger of the spiker machine; and
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other right unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing November 8, 2005.

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On October 18, 2005, Claimant, a Machine Operator, was working as feeder for the spiker operator on a road gang in Gallup Subdivision. A spike jam occurred in the auger. Claimant thought that the machine was off. Using a metal bar hook, he was able to remove all but one of the spikes causing the jam. He reached his hand into the auger to remove the remaining spike by hand. As he loosened the spike, the auger began to turn and injured his ring finger before he was able to remove his hand from the machine. By putting his hand into the auger without following the lockout/tagout procedure the Claimant violated the Carrier's Maintenance of Way Operating Rules 1.1.2 Alert and Attentive and Engineering Instructions 1.10 Lockout/Tagout, 1.10.2 General Requirements, and 1.10.3 Energy Isolating Procedure.

The Organization contends that it was a direct violation of the Agreement to assign the Claimant, a Machine Operator, to various Trackman's jobs during the two weeks leading up to the accident that he was on the road gang, including on the day of the accident when Claimant was working as a feeder for the tie spiker operator. In addition, according to the Organization, the Carrier improperly assigned the Claimant to work with a machine that was prone to jamming because of a design flaw and with which he was unfamiliar. Further, the Organization argues, the Claimant was improperly assigned feeder duties on the date in question since the regular feeder, who is in the Trackman classification, was assigned to operate a second spiker machine, while the Claimant, a Machine Operator, was assigned the feeder duties of a Trackman. Finally, the Organization asserts that it cannot agree with the Carrier's "decision to issue a Level S Thirty Day Record Suspension, and a Probation Period of Three Years," and that the "discipline issued is extreme, unwarranted and unjustified and is not supported by the

flagrant abuse of any of the Carrier's Rules." Even if the Carrier had proved its allegations, the Organization argues, "the discipline issued is excessive in proportion to the Carrier's allegations. . . ."

The Carrier contends that the Claimant was first offered the opportunity to operate a spiker machine, but declined, before being assigned to feed spikes on the spiker machine being operated by another Machine Operator. The record clearly shows, the Carrier asserts, that the Machine Operator told the Claimant that if a jam occurred to notify him so that the machine could be stopped, lockout/tagout applied, and the jammed spikes removed. The Carrier notes that the spiker machine had jammed earlier in the day, and the Claimant notified the Machine Operator, who stopped the machine, and the jam was cleared. The Carrier points out that it is not disputed on the record that the Claimant was trained in and was familiar with the lockout/tagout rules. The Carrier contends that the Organization is attempting to shift blame to the Carrier, but that the crucial fact is that had the Claimant followed the lockout/tagout procedures designed to protect him from harm, he would not have sustained an injury. The Carrier cites Third Division Awards 33918 and 37338 in support of its position that the degree of discipline administered was not excessive.

The Board finds that by putting his hand into the auger without following the lockout/tagout procedure the Claimant violated the Carrier's Maintenance of Way Operating Rules 1.1.2 Alert and Attentive and Engineering Instructions 1.10 Lockout/Tagout, 1.10.2 General Requirements, and 1.10.3 Energy Isolating Procedure. The Board further finds that this was a serious rule violation under the Policy for Employee Performance Accountability for which a 30-day record suspension is an

appropriate penalty. However, review of the Claimant's record regarding discipline and injuries shows that he came within the following language of BNSF's Policy for Employee Performance Accountability under the heading Serious Rule Violations:

Exception: The serious-incident review period will be reduced to 12 months for employees who have completed at least five years' service and who have been injury-free and discipline-free during the five years of service preceding their first serious incident.

The 30-day Record Suspension will stand, but the review or probationary period will be reduced to 12 months.

A W A R D

Claim sustained in accordance with the Findings.

O R D E R

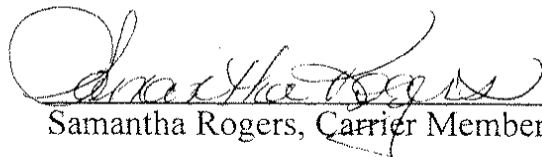
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Sinclair Kossoff, Chairman & Neutral Member



David Tanner, Organization Member



Samantha Rogers, Carrier Member

Chicago, Illinois  
Dated: October 19, 2007