

Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way)	
Employees' Division/IBT)	
)	
vs)	Case 91/Award 92
)	
Burlington Northern Santa Fe)	
Railway Company)	

Statement of Claim

Appeal of discipline of a thirty (30) day record suspension, and a three (3) year probation assessed Claimant Andrew K. Weaver on March 31, 2005.

Background

On February 10, 2005 the Claimant to this case, Andrew K. Weaver was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged culpability for causing an accident between the spike puller that he was operating and a spike reclaimer operated by another employees. This incident happened on February 8, 2005 while the Claimant was assigned to work as a Group 5 Operator on the TP06 Production Gang. At the time of the incident the gang was working in the vicinity of Stockton, California.

After postponement an investigation was held at Littlefield, Texas on March 3, 2005. On March 31, 2005 the Claimant was advised that he had been found guilty of violating the Maintenance of Way Operating Rules 6.50; 6.51 and 6.50.1 and he was assessed the suspension and probation outlined in the Statement of Claim.

The discipline was appealed by the Claimant in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the Organization that created Special Board of Adjustment (SBA) 1112 under the authority of the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been granted final and binding powers to issue an Award on this case based on the criteria outlined by the parties in Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

Discussion & Findings

Rule 40 of the parties' labor agreement is incorporated into this Award by reference and in toto.

Rules 6.50; 6.51 and 6.50.1 of the Maintenance of Way Operating Rules state the following which is cited here in pertinent part.

Rule 6.50

On-track equipment must move at a speed that will allow stopping within half the range of vision short of:

.....

- Men or equipment fouling the track.

Rule 6.50.1

On-track equipment must not exceed the manufacturer's recommended speed of any of the following speeds, whichever is less:

Type of Equipment**Speed**

.....

Other on-track equipment..... 30 MPH

Exception

Speed of on-track equipment designed for high speed travel will be governed by the System Special Instructions.

When determining the proper speed, take into consideration the following:

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- Sight distance
- Visibility
- Other conditions that may adversely affect the safe operation of on-track equipment

Rule 6.51

On-track equipment operators are responsible for maintaining a safe braking distance between their on-track equipment and other on-track equipment, trains and engines.

The Claimant to this case, Andrew Weaver, held the Group 5 machine operator assignment on gang TP06 on the date of February 8, 2005 as noted above.

According to testimony at the investigation by the assistant road master on gangs TP06 and SC06 he arrived at the scene of the accident involving the Claimant to this case at about 6:05 PM on February 8, 2005. He was not present when the accident occurred but was located at the rear of and some distance away from the gangs doing the track work. It took him about 15 minutes to arrive at the scene of the accident. It was dark by the time he arrived. He had been informed earlier by an assistant foreman that there had been an accident at a location known as the Murphy Road Crossing in the Stockton,

California subdivision. When he arrived at the scene of the accident this supervisor found the Claimant "...with his head split open..." and he took him into his truck and proceeded to the hospital. The assistant road master states that he was informed that the Claimant had "...backed his spike puller into the reclaimer and had done significant damage to the spike puller and had hit his head on part of the spike puller...". According to this witness there is a safety briefing each morning involving travel distances, footing and other matters dealing with day to day work on the track by the two gangs. This witness states that the Claimant had a radio on his machine with frequency to his truck. He states there was no communication by the Claimant about the move which caused the accident prior it happening. Prior to the accident the Claimant was pulling spikes at about Milepost 1108.8. The rest of the machines working on the track were located at about Milepost 1109.4 which is close to the Murphy Road Crossing. A spike reclaiming machine was stopped at 1109.4 and the operator was doing maintenance on the machine and he had no information that the spike puller operated by the Claimant was moving in his direction. The spike reclaimer was locked and tagged out which means it had its lights turned off. In a written statement for the record the operator of the spike reclaimer in question states that no communication was made to him prior to the spike puller operated by the Claimant running into him. It was starting to get dark at the time of the accident which was, as noted, some 15 minutes before the assistant road master arrived on the scene.

Testimony by the Claimant is that he had about 7.5 hours' rest on the day prior to the accident. The day that the accident happened was gray and overcast and at the time of

the incident, according to the Claimant, it was "...pretty close to being (fully) dark...". According to the Claimant, who was a operating spike puller machine in tandem with another the both of them worked the day of February 8, 2005 up to Milepost 1108.8. When the operator of the other machine told him that they ought to call it a day because it was getting dark the Claimant advised the other operator that he was closing down his machine and was heading for Milepost 1109.6 where he was expecting to find the rest of the machines and members of gang TP06. But, according to the Claimant, unknown to him, the gang has actually pulled up at another point which was Milepost 1109.35. He states that "...no one on the gang had contacted (him) with this information...". He was backing his machine at about 6-8 MPH with his lights on which gave him about 50 feet of visibility. He came upon the reclaiming machine with no lights on parked on the mainline and applied his brakes but was unable to stop in time and the collision occurred. He states that he did not communicate with the gang that he was backing up but he did communicate with the operator of the other spike puller. The Claimant states that he knows that the space for traveling machines in 300 feet. When asked what the speed limit is he states that it is "...whatever speed is safe, I suppose...". He states that he understands that when traveling with a machine he has to be able to "...stop it within half the range of vision...". He states that he believed that he followed that rule correctly on the date of the accident. He also states that if the operator of the spike reclaimer had left his lights on the accident would not have happened. He states that he only briefed the operator of the other puller that he was headed back toward where the rest of the equipment was supposed to

have been. He did not contact anyone else but he states that when he talked it was an open channel and anyone else with their radio on could have heard what he had said to the other puller operator. When he hit the spike reclaimer the second puller which was backing up next in line stopped without running into him. This was so because the operator of that puller was 300 feet from him and because the Claimant had his lights on. Prior to making the move the Claimant states that he was not contacted by anyone about the exact location of the other machines on the track. There was a backup alarm on the Claimant's machine but according to his testimony it did function when the lights were on because, if the Board understands his testimony correctly, the alarm interprets that to mean that the machine is going forward. And the backup alarm does not work when the machine is going forward, or is perceived as going forward with its lights on. The Claimant states that the accident would not have occurred if the operator of the *reclaiming machine had not just abandoned his machine in the middle of the track with the lights turned off.*

A review of the full record in this case warrants the following conclusions. The Claimant's testimony does not persuade the Board that he was sure where the other machines were located when he finished work on the date of February 8, 2005 although he had an idea that they were located in one spot when they were, in fact, located in another. Secondly, although he testified that he had communicated with the operator of the other spike puller that he was returning to the gang, and the other operator followed him at a safe distance, there is no evidence that the Claimant adequately communicated

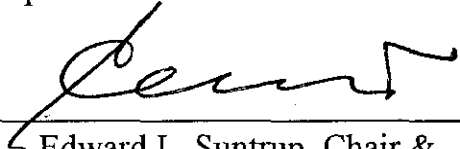
with anyone else that he was returning to join the other machines. Clearly, the Claimant has to shoulder some blame for the accident that occurred. On the other hand, the rule states that an operator must be able to stop within half the distance of the line of vision. For the Claimant that was only 50 feet. The lighting system, according to him, is after market and that is all the light it provides. Nothing in the record contradicts this. So the margin of error is greatly reduced if there is an obstacle in the track when moving equipment such as a spike puller in the dark. The simple fact is that the operator can see only a very short distance in front of where he is going. The Claimant was not going very fast. The rule provides that on-track equipment is permitted to travel up to 30 MPH and the Claimant was going some four times slower than the permitted speed. Such appeared to have been prudent even in view of the Carrier's rule which require that "...sight distance; visibility (and) • other conditions (be taken into account) that may adversely affect the safe operation of on-track equipment...". What is disconcerting about the record in this case is that communication ought clearly to be open ended between operators of equipment on the track and the rules cited do not say that it ought not be. There is no information that anyone advised the two spike pullers exactly where the rest of the equipment was located by the time it got dark on the date in question even though all of the others working on gang TP06 must obviously have known that the spike pullers were separated from the main coterie of machines. Secondly, in view of these considerations the actions by the operator of the spike reclaimer is open to question when he simply turned off his machine, in the dark, and turned off all of his lights when he obviously

must have known that the spike puller machines would be returning to the vicinity of where he was located. The Claimant to this case was disciplined because he did the most visible: he ran his machine into another one. But others must foot some of the blame for the accident also since their actions provided the context for the accident. The Claimant was engaged in a degree of negligence: but so were others and the Claimant's actions have to be understood in this manner.

The Claimant to this case is an experienced employee. A review of his record shows that he is no stranger to safety problems albeit most of that happened in the early part of his career with the Carrier: over twenty (20) years ago. The more recent suspension in 2002 for failure to protect track equipment with a derail is, however, cause for concern. In view of these considerations, as well as what this Board views as extenuating circumstances in this case, it does not believe that it is unreasonable to reduce the discipline to a fifteen (15) day record suspension, albeit the ruling is that the three (3) year probation shall remain intact. This Board is not unmindful of the extreme importance of safety in this industry and it is reducing the actual suspension in this case uniquely because of extenuating circumstances. Concurrently, the Claimant is put on notice that any additional infraction of safety rules on his part will be dealt with in accordance with the probation assessed by the Carrier.

Award

The claim is sustained only in accordance with the Findings. The thirty (30) day suspension shall be reduced to a fifteen (15) day suspension and the Claimant's record shall be amended accordingly. All other requests in the Statement of Claim are denied. The Claimant shall be reimbursed by the Carrier for fifteen (15) of the thirty (30) days held out of service. Implementation of this Award shall be within thirty (30) days of its date.



Edward L. Suntrup, Chair &
Neutral Member

Date: September 23, 2005