

**NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT**

|                                     |  |                        |
|-------------------------------------|--|------------------------|
| <b>BURLINGTON/NORTHERN/SANTA FE</b> |  | <b>Claimant:</b>       |
|                                     |  | <b>Ira M. Bourland</b> |
| <b>AND</b>                          |  |                        |
|                                     |  | <b>CASE NO. 42</b>     |
| <b>BROTHERHOOD OF MAINTENANCE</b>   |  | <b>AWARD NO. 43</b>    |
| <b>OF WAY EMPLOYEES</b>             |  |                        |

On February 2, 2001 the Brotherhood of Maintenance of Way Employees ("Organization") and the Burlington Northern/Santa Fe ("Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 1112 ("Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railroad Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed, suspended, or censured by the Carrier. Moreover, although the Board consists of three members, a Carrier Member, an Organization Member, and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railroad Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier's service or who have been censured may choose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended, or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

This Agreement further established that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of one's desire for expedited handling of this appeal, the Carrier Member shall arrange to transmit one copy of the notice of the investigation, the transcript of the investigation, the notice of discipline and the disciplined employee's service record to the Referee.

These documents constitute the record of the proceedings and are to be reviewed by the Referee.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified, or set aside, will determine whether there was compliance with Schedule Rule 40; whether substantial evidence was adduced at the investigation to substantiate the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof.

In the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

## **BACKGROUND FACTS**

Claimant, Ira M. Bourland, Group III, Machine Operator, was charged with failure to be alert and attentive. Claimant is also charged with failure to move at a speed that would allow stopping in one-half the range of vision short of equipment fouling the track while operating BNX 8600024 which resulted in a collision and with subsequent extensive damage to stabilizer BNX 8600024 and Tamper BNX 5400349. This incident occurred on Tuesday, October 2, 2001 at approximately 1325 hours, at or near MP 391.3 and Nonpareil, Nebraska on the Butte Subdivision. The Claimant was issued a Level S Thirty (30) Day Suspension for the alleged BNSF Maintenance of Way Safety Rule 1.2.3 and Rule 6.51. The investigation was held on Tuesday, October 16, 2001 located at 111 West 1<sup>st</sup> Street in Allionce, Nebraska. BNSF Maintenance of Way Safety Rule 1.2.3 states as follows:

### **Alert and Attentive**

**Assure that you are alert and attentive when performing duties.**

Rule 6.51 is as follows:

### **Maintaining a Safe Braking Distance**

**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.**

## FINDINGS AND OPINION

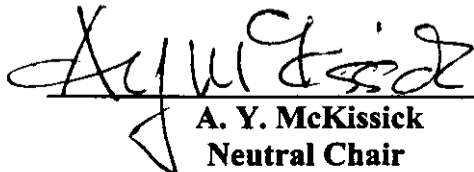
The Organization asserts that the Claimant is a good, hard-working machine operator with more than twenty-five (25) years with no prior accidents. However due to his allergic reaction to wasps, he momentarily loss his focus and unwittingly ran into Kershaw's machine. Both his foreman and his physician have supported the Claimant's version of events. Based on the above, the Organization request that the Board sustain the Claimant's appeal and expunge his record.

The Carrier retorts that the Claimant was speeding stopped short and damaged Kershaw's machine. The Carrier reasons that this incident would not have happened had the Claimant been alert and attentive to the situation at hand. In response to the Organization's argument of his allergic reaction to the wasp, the Carrier responds that had he not been traveling so close to Kershaw's machine, he would have had enough time to activate the emergency brakes. Based on the foregoing, the Carrier requests that the Board deny this appeal.

After a careful review of the record, the Board finds that the Claimant was negligent. He not only sped but stopped short resulting in the extensive damage to Kershaw's machine. By his own admission, the Claimant stated at the hearing that it takes "four (4) to five (5) bars to stop the machine." However, when he described the accident, he stated that he "applied several bars of air." Thus, the Board finds that the latter application was insufficient. The Claimant also admitted that he "lost" his "concentration" resulting in his backing into Kershaw's machine. Although this was his first accident, the record reflects a very spotty disciplinary record. In sum, this accident was a direct result of his inattention and his inability to maintain a safe braking distance, violative of Rules 1.2.3. and 6.51 . Based on all the foregoing, the Board finds that it must deny this appeal.

## AWARD

**The thirty (30) day suspension is affirmed. The appeal is denied.**



A. Y. McKissick  
Neutral Chair  
SBA No. 1112

**Dated: February 19, 2002**