

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE

AND

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

**Claimant:
Stanley D. Cartwright**

**CASE NO. 49
AWARD NO. 50**

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 establishes 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, Stanley D. Cartwright, Machine Operator SC-27, was hired on May 22, 1992 by the Carrier. On May, 2000, he was operating a Stabilizer with a Double Broom BNX 05-00050 when a collision occurred at or near milepost 186.5 on Main Track 1 on the Sandhill Sub at 0923 hours. The result of this collision caused subsequent damage to the Double Broom and the Ballast Regulator BNX 06-0305. Claimant was charged in that incident for his alleged failure to be alert and attentive and his failure to move at a speed that would allow stopping at one-half the range short of equipment fouling. He was also charged with his alleged failure to maintain a safe braking distance between his on-track equipment and other trains or engines. The facts reflect that no injuries occurred; and there was no "down time". However, the cost of the resulting collision amounted to one thousand (\$1,000.00) dollars.

After an investigation on Wednesday, May 29, 2002, the Claimant was issued a Level S thirty- (30) -day Suspension for the violation of Burlington Northern Santa Fe Railway Maintenance of Way Rules 1.1.2, Rule 6.50, and Rule 6.51, effective January 31, 1999. Rules 1.1.2, Rule 6.50, and Rule 6.51 are as follows:

Maintenance of Way Operating Rule under General Responsibilities 1.1.2 Alert and Attentive:

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.

Maintenance of Way Operating Rule 6.50 Movement of On-Track Equipment:

On-track equipment must move at a speed that will allow stopping in ½ the range of vision short of:

- **Train.**
- **Engine.**
- **Railroad Car.**
- **People or equipment fouling the track.**
- **Stop signal.**
- or
- **Derail, moveable point frog or switch lined improperly.**

Maintenance of Way Operating Rule 6.51 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.

For purpose of this rule:

Working mode will apply to on-track equipment stopped or moving slowly in the performance of maintenance activities.

Traveling mode will apply to on-track equipment moving to and from work location(s) or performing inspection activities.

On-track equipment operators must:

- **Insure that on-track equipment remains at least 300 feet behind a train or engine while in working or traveling mode, except when it has been determined by a job briefing that the train or engine is stopped and will not move.**

- **Insure that on-track equipment remains at least 300 feet behind other on-track equipment while in traveling mode. Exception: On-track equipment may be “bunched” to make movements over short segments of track such as crossings at the grade, moveable structures and control points. A job briefing must establish the procedure(s) with all involved employees. Machines must be at least 50 feet apart during such movements.**
- **If machines will be “bunched” when stopped, all employees must remain clear of the track until the entire movement has stopped, unless otherwise instructed by the employee in charge.**

The investigation was held in the Burlington Northern Santa Fe Conference Room at 111 West First Street in Alliance, Nebraska.

It is the position of the Organization that the Claimant was alert, attentive, and in the process of performing his job when the collision occurred. The Organization asserts that he was also traveling at a safe speed of 10 mph. However, the Organization adds that he was “copying the track and time” while moving, which resulted in the collision. Nonetheless, the Organization maintains that the Claimant is an exemplary employee with no disciplinary infractions for ten (10) years, except for this incident. Thus, the Organization requests that the Board sustain this appeal and rescind this thirty- (30) -day suspension.


The Carrier retorts that the Claimant had knowledge that the machinery in front of him had completely stopped. Notwithstanding this notice, the Carrier maintains that the Claimant continued to progress at ten (10) mph while simultaneously “working on some track and time”. Thus, the Carrier asserts that the Claimant was not mindful of his precarious situation, which brought about the resulting collision. Based upon the Claimant’s description of events, the Carrier asserts that the Claimant violated the BNSF operating rules, as he was inattentive and omitted to maintain a safe braking distance to avert this collision. Therefore, the Carrier requests that the Board deny the Claimant’s appeal and allow the thirty- (30) -day suspension to stay.

After a careful review of the totality of evidence, this Board finds that the Claimant's appeal must be denied for the following reasons. First, it is clear from the record that the Claimant was careless and inattentive, as he was in the process of "copying the permit" while concurrently continuing to move at 10 mph. Thus, he failed to comply with Rule 1.1.2. Second, the Board finds that this collision would not have occurred had the Claimant allowed a one-half ($\frac{1}{2}$) range of vision of a train, as required by Rule 6.50. Third, the Board finds that the Claimant also failed to maintain a safe braking distance of "at least 300 feet" in a working mode, required of Rule 6.51.

In addition, the Claimant straightforwardly admits to his inattention. That is, but for the Claimant's simultaneous project of copying the permit, this collision would not have occurred. Accordingly, the Board is compelled to find that the Claimant violated all of the above stated operating rules. Notwithstanding his exemplary past record, the Board finds that this appeal must fail for the aforementioned reasons.

AWARD

The Claimant's appeal is denied. The thirty-(30) -day suspension was for just cause and must stand.


A. Y. McKissick
Referee