

Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way
Employees' Division/IBT

vs

Burlington Northern Santa Fe
Railway Company

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Case 94/Award 95

Statement of Claim

Appeal of discipline of a thirty (30) day Level S record suspension and a year of probation assessed Claimant Urban Salazar on June 9, 2005.

Background

On March 8, 2005 the Claimant to this case, Urban Salazar was advised by the Division Engineer, Powder River Division South to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged violation of various operating rules including Rules S-13.7.1, S-21.2.3 of the Maintenance of Way Safety Rules and 1.1.2 of the Maintenance of Way Operating Rules. According to the notice of investigation the violation of this and other rules cited in the notice of investigation resulted in an injury to the Claimant while working as a rail detector and tract inspector on March 2, 2005 on track headquartered at Keenesburg, Colorado.

An investigation of the incident was held on May 23, 2005 in Denver, Colorado. On June 9, 2005 the Claimant was advised, as stated in the foregoing, that he had been found guilty of violating the rules at bar and he was assessed discipline as stated 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

Testimony by the assistant road master at the Carrier's Powder River Division is that he received a phone call from the Claimant on March 2, 2005. The Claimant held position as track inspector headquartered at Keenesburg, Colorado. According to this witness the Claimant was escorting a rail detector at a location called East Roggen when he smashed a finger while throwing a power switch. This happened at about 11:00 AM. The assistant road master, who was in Denver at the time of the call, drove his truck to Keenesburg and picked the Claimant up and brought him to a hospital at Brighton, Colorado. According to this witness, the Claimant told him that when he threw the switch he smashed his finger on a guard located near the switch. The guard is located about a foot and a half from the switch itself. The Claimant injured his right hand in the

maneuver. Apparently his left hand was on the end of the handle and his right hand was up against the handle, but not on it. When he pulled the handle down the right hand came down and hit a cover on some rods and his little finger on the right hand was injured. The pad of this finger was ripped off and at the hospital it was necessary to graft skin from the palm of his hand onto his little finger. The Claimant subsequently had to return for medical treatment for the little finger on his right hand a number of times. According to the assistant road master the Claimant would not have injured himself if he had had both hands, one on top of the other, on the end of the switch when he threw it. A switch such as the one in question is supposed to be thrown as a two hand operation. The Claimant had left his truck, from which he states that he was using his computer to get track clearance, in order to throw the switch. As a result he also did not have a glove on the injured hand when he threw the switch. According to the management witness, gloves are required when work is being done outside of and away from a vehicle.

Testimony by the Claimant is that this was the first time he had thrown what is called a dual control power switch while working for the railroad. He states that he had seen others throw such the switch a few times, but when he got injured it was the first time he himself was involved in such a maneuver.

According to the Claimant the accident happened when he got out of his truck, walked to the switch and removed his right glove to reach in his pocket for the keys.¹ He

¹In testimony the Claimant first states that he removed his left glove. But he then corrects himself at a later point. It was the little finger on his right hand, not his left, that was injured.

then unlocked and inspected the switch. He subsequently grabbed the big lever of the switch and threw it once to engage it. Then when he was pulling the switch in the other direction is when he injured his finger. Prior to the accident the Claimant had the rail detector on a side track, a train had passed, and he was getting ready to bring the detector onto the main track. He had gotten authority to go onto the main track off his laptop computer in his truck through what is known as Digicon. The accident occurred when he was getting ready to go out onto the main track with the detector.

A review of the full record in this case fails to persuade the Board that the Claimant acted in a safe manner by the way he used the switch in question. There is some debate in the testimony over whether it would have made a difference whether the Claimant would have been wearing gloves or not when he threw the switch. Common sense dictates, of course, that a hand protected by a glove is less likely to be injured than one without such protection. This is why there is a rule about wearing gloves in the first place. But arguendo, in this case, it was not the glove or lack thereof that caused the injury, but the manner in which the switch was thrown. The actions of the Claimant, by definition, represented negligence otherwise he would not have been injured in the first place.

Upon the record before it the Board has no other alternative but to conclude that the instant claim before it be denied. The Claimant was in violation of the safety rules cited. He was injured because he was not attentive to what he was doing while on the job. There is no other reasonable explanation for what happened by way of evidence