

PUBLIC LAW BOARD NO. 5814

Case No. 31

Award No. 31

PARTIES TO DISPUTE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Conductor W. R. Hunter for removal of discipline assessed him on May 19, 1999, and that he be made whole for all lost wages and benefits.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On April 30, 1999, Claimant was called as the Conductor of Train M-LAUSWEI-30A operating from Laurel to Great Falls, Montana. At around 12:30 a.m. on May 1, 1999, Train M-LAUSWEI-30A stopped at Judith Gap, Montana to pick up seven cars from J. D. Lumber. The Claimant noticed that one of the cars to be picked up had bad flat spots so he decided to leave it at J. D. Lumber.

The Claimant climbed onto the foot ladder of car #617530 and instructed the Engineer to begin pulling the six cars out of the industry. While the cars were being pulled out the foot ladder on which the Claimant was standing broke causing him to fall to the ground. He immediately contacted the Engineer and the train was stopped.

The Claimant notified the Dispatcher of this incident and the Dispatcher apprised the Trainmaster at Great Falls. The Claimant was able to complete the trip to Great Falls. He completed a personal injury/occupational illness report and was transported to a hospital where he was treated and released.

Later on May 1, 1999, a three-man inspection team inspected the six cars brought into Great Falls by Train M-LAUSWEI-30A. In addition to the broken foot ladder on car #618530, the inspection team found mechanical defects to the foot ladders on two other cars.

On May 2, 1999, Claimant was notified to attend an investigation to ascertain the facts and determine his responsibility, if any, for his alleged failure to properly inspect a freight car resulting in personal injury to himself. The investigation was held on May 6, 1999. On May 19, 1999, the Claimant was assessed Level I discipline (formal reprimand) for his purported violation of Rule 1.33 of the Carrier's General Code of Operating Rules. The Organization has appealed that discipline to this Board for adjudication.

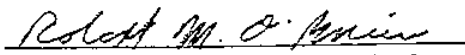
Initially, this Board finds it immaterial for purposes of this case whether or not Claimant inspected the two other cars picked up at Judith Gap that were discovered to have mechanical defects to their foot ladders. On May 19, 1999, the Claimant was disciplined for "*failure to properly inspect cars before moving the cars, resulting in personal injury to yourself*" (underscoring added). His personal injury had nothing to do with any car other than car #617530, the car on which the foot ladder broke causing him to fall.

The Claimant's reputed failure to inspect any cars other than car #617530 did not "*result in his personal injury*." Therefore, it was not a basis for the discipline assessed him and is immaterial to this dispute.

The Carrier has not established that the mechanical defect to the foot ladder on car #617530 was readily ascertainable to the Claimant before he stepped on it. Indeed, the Carrier acknowledged that the defect "*could have been very apparent, [or] it could've [sic] been very difficult to identify.*" In the light of this acknowledgment, the Carrier has not proven to our satisfaction that the Claimant's personal injury could have been prevented. Therefore, the discipline assessed the Claimant for his putative violation of Rule 1.33 of the Carrier's General Code of Operating Rules was unwarranted and the claim must be sustained as a result.

AWARD: Claim sustained.

Carrier is directed to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member

Dated: 12-2-02