

PUBLIC LAW BOARD NO. 6284

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

-and-

Burlington Northern-Santa Fe Railway

AWARD NO. 14

CASE NO. 14

STATEMENT OF CLAIM:

Concerning the discipline of Engineer BM James who was dismissed from the Carrier as a result of an investigation accorded on March 30, 1999. It is requested that Engineer James' discipline be reversed and that he be made whole for all time lost resultant from this incident, and that notation on his personnel record be removed.

FINDINGS:

This Public Law Board No. 6284 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated May 11, 1999, the Carrier notified Engineer B.M. James that he was dismissed from service as follows:

B.M. James, Engineer,

This letter will confirm that as a result of investigation that started on March 30, 1999, reconvened and concluded on April 21, 1999, concerning your misrepresentation of facts surrounding your personal injury report as submitted to carrier officers on December 17, 1998, while working as crew members of M-KLFKLF1-16, on duty 1331 hours, December 16, 1998, at Klamath Falls, Oregon, you are dismissed from employment for violation of GCOR-1.2.7 and GCOR 1.6.4.

Your personal record was taken into account and discipline is being assessed in accordance with the disciplinary policy.

Please arrange to return all Company property and any Amtrak transportation passes in your possession. A check will be issued for any moneys due you.

This letter will be placed in your personal file. Your signing below serves as receipt of this dismissal.

s/Daniel L. Burns  
Region Manager - Service and Performance

The Organization appealed the discipline, and properly progressed the matter to this Board for adjudication.

The Carrier has not met its burden of proof, by substantial evidence of record, that Engineer James misrepresented facts surrounding his personal injury report submitted on December 17, 1998. The Carrier has not in any credible way substantiated a dishonesty charge against Mr. James. The issuance of discipline in this case, on the record before this Board, is untenable.

On December 16, 1998, Engineer James worked as engineer at Klamath Falls, Oregon on train M-KLFLF1-16A on duty at 1331 hours. He was assigned a two unit consist with BN 2285 as the controlling locomotive. While on his trip, Mr. James entered a curve between MP 34 and MP 35, and after exiting the curve and upon reaching straight track, he was injured. He submitted a Personal Injury Report before leaving the property. In it he described his injuries as "Neck Pain, back pain, Shoulder Pain, Head Pain, Knee Pain." In the report he also explained in part how his injury occurred as follows:

DESCRIBE FULLY, HOW INJURY OR OCCUPATIONAL ILLNESS OCCURRED:	
Running BN 2285 as Lead unit at 46 mph when at MP 34 to 35 experienced excessive lateral movement that threw all crew members around cab. The BN 2285 was Reported at 2328 on 12/14/98 Not Lead unit Qualified, yet was on Lead unit	
WAS THE ACCIDENT CAUSED BY THE CONDUCT OF ANOTHER PERSON?	IF YES, PLEASE DESCRIBE
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	BNSF Ft. Worth Mech. Round house Bremen
COULD YOU, BY MORE CARE ON YOUR PART, HAVE PREVENTED YOUR INJURY?	IF YES, HOW?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
WAS THERE ANYTHING WRONG WITH THE EQUIPMENT, WORK PROCEDURES, OR WORK AREA WHICH LED TO THIS ACCIDENT / INJURY?	IF YES, PLEASE DESCRIBE
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Yes the BN 2285 was Reported Bad ordered unit to Ft. Worth Mech @ 2328 on 12/14/98 Not Lead Qualified, excessive lateral movement
TYPE OF MEDICAL ATTENTION ADMINISTERED (PRESCRIPTION, BRACE, SPLINT, ETC)	

The evidence of record shows that Mr. James went to the Merle West Medical Center, Emergency Department, after leaving the property on December 17, 1998 and was treated for a complaint of back pain, shoulder pain, knee pain and neck

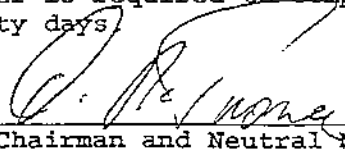
pain. The record shows that he was diagnosed and treated for a back sprain and continual neck pain. No evidence of record contradicts that such injuries complained of in the report or at the hospital did not in fact occur. And, in fact, the lead locomotive referred to in Mr. James' injury report, BN 2285, had been reported to the mechanical desk on December 14, 1998, two days prior to the December 16, 1998 incident as "NOT LEAD QUALIFIED ACCT ROUGH RIDER ... CHECK OUT." This locomotive also was turned in under a Safety Alert for inspection in Chicago on May 25, 1997, "VERY ROUGH RIDER, INSPECT TRUCKS, ETC. VIBRATES CREW INSIDE CAB." No defects were found at that time. And, no defects were found after the December 16, 1998 incident.

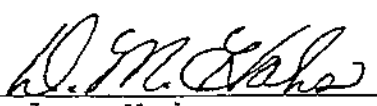
The Carrier asserts that the record shows that it was impossible for Mr. James to have suffered the forces on his locomotive that he alleges. We have studied the extensive record before this Board and we are compelled to conclude that the Carrier has not proven this assertion by substantial evidence of record. Neither reenactment was shown to be identical to the incident; and track measurements made by the Carrier were at the wrong location. The photo exhibits including Exhibit 41-C, E, F and H depict track conditions. Ultimately, it must be concluded that the extensive record before this Board is devoid of evidence which indicate that Engineer James was dishonest as to the facts he set forth in his injury report filed on December 17, 1998. Claim sustained.

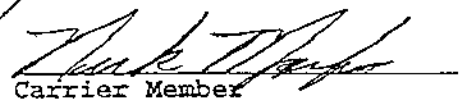
AWARD

Claim sustained.

ORDER: The Carrier is required to comply with this award within thirty days.

  
Chairman and Neutral Member

  
Employee Member

  
Carrier Member

Dated: Feb 24, 2001