

PUBLIC LAW BOARD NO. 5939

Case No. 52
Award No. 52

PARTIES TO DISPUTE: **BROTHERHOOD OF LOCOMOTIVE
ENGINEERS & TRAINMEN**

-and-

BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer N. W. Schipper for removal of discipline (Level S 30-day suspension) from his personal record and that he be paid for all lost time.

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, 1932;

That this Board has jurisdiction over the dispute involved herein.

On October 30, 2003, Claimant was the Engineer on Train R-PWR4251-30, the so-called "Buckwheat Local". Brakeman D. R. Severin and Conductor J. R. Hood were the other members of the crew. They went on duty at 6:00 p.m. at Longmont, Colorado. This was a regular assignment for Brakeman Severin and Conductor Hood. Conductor Hood had worked this job for 10 years.

Early during their tour of duty, the crew pulled a cut of 10 or 11 cars off track Great Western 2 (GW2) at Longmont and set them over on track Great Western 1 (GW1). They held a job briefing prior to the move, which was made by radio signals. The cars did not clear the switch between GW1 and GW2, so the crew was required to make a second shove so they could go back into GW2. Conductor Hood changed from radio signals to hand signals. He did not notify Brakeman Severin of this change.

Conductor Hood gave the Claimant a hand signal to shove down GW1. Neither Conductor Hood nor the Claimant knew where Brakeman Severin was during this shoving movement. He was on the opposite side of the cars from them and they could not see him. After the joint was made, Conductor Hood gave the Claimant a signal to stop. It was raining and sleeting at the time.

Brakeman Severin was seriously injured during the second shoving movement. He was found lying on the ground after the movement stopped. He was transported to a hospital where he was diagnosed with two broken ribs, a dislocated pelvis, a bruised back and a hernia.

The crew of the Buckwheat Local was notified to attend an investigation on October 26, 2004, to ascertain the facts and determine their responsibility, if any, for their alleged failure to perform switching in a safe and efficient manner on October 23, 2003. No one could explain how Brakeman Severin was injured. Brakeman Severin had no recollection of the accident. He simply had no memory of October 23, 2003.

On November 9, 2004, the Claimant was issued a Level S thirty day record suspension for his reputed violation of Rules 1.12, 1.2.3, 5.3.6 and 7.7 of the Carrier's General Code of Operating Rules. The Carrier determined that Conductor Hood was more culpable than the Claimant and he was dismissed from service.

The evidence presented at the October 26, 2004, investigation fails to convince this Board that the Claimant was responsible in any way for Brakeman Severin's serious accident. He made the second shoving move at around 4 or 5 miles per hour. The Carrier considers 4 MPH a safe speed at which to make a coupling. The Claimant complied with this standard.

It must be emphasized that Conductor Hood was controlling the second shoving movement on GW1. It was his decision to change from radio signals to hand signals. He, not the Claimant, was responsible for notifying Brakeman Severin of this change. Evidently, Brakeman Severin was unaware of this change. If this caused or contributed to the Brakeman's accident and serious injuries, the responsibility rests solely with Conductor Hood.

There is no evidence that the Claimant was not alert or attentive during the second shoving move on GW1. He moved on the Conductor's signals. It was not his responsibility to ascertain where every crew member was during this shoving move. Rather, that was the obligation of Conductor Hood who was in charge of the crew and the switching movement. As noted above, Conductor Hood had 34 years of service and had worked on the Buckwheat Local for approximately 10 years.

Inasmuch as the Claimant was not responsible for Brakeman Severin's accident, the discipline assessed him on November 4, 2004, was unwarranted. That discipline must be removed from the Claimant's personal record and he shall be made whole for all lost time.

AWARD: Claim sustained.

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

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Stephen D. Speagle
Stephen D. Speagle, Employee Member

Roger A. Boldra
Roger A. Boldra, Carrier Member

Dated: Oct 3, 2006