

PUBLIC LAW BOARD NO 7026

AWARD NO. 02
CASE NO. 02

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: May 25, 2007

STATEMENT OF CLAIM:

ok
Claim of Northern California Division Yardman B. D. Cardoza for removal of
Thirty Day Record ~~and~~ Suspension from his personal record and pay for time lost
while attending investigation..

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein
are Carrier and Employees within the meaning of the Railway Labor Act, as
amended, that this Board is duly constituted by the agreement of the parties, that
the Board had jurisdiction over the dispute, and that the parties were given due
notice of the hearing.

On June 30, 2004, Mr. B. D. Cardoza was notified to attend a formal investigation as
follows in pertinent part:

“You are hereby notified to attend formal investigation in the
General Conference Room, at 4006 E. Vine Street, Fresno, Ca.
at 0900 hours on Thursday, July 15, 2004, for the purpose of
ascertaining the facts and to determine your responsibility, if any
in connection with your alleged failure to provide factual statements
and your alleged dishonesty, which first became known to BNSF on
June 26, 2004, surrounding alleged personal injury which you claimed
occurred on May 20, 2004 at Fresno, California; in possible violation
of Rules 1.6 Conduct, and 1.2.7, of the General Code of Operating
Rules in effect April 2, 2000 as amended.”

The transcript of the hearing reflects varying opinions on the degree of violence involved in the vehicle incident on May 20, 2004.

The contract van driver states that when the car in lane one drifted into lane two and struck the right rear of the van, he felt a little tap, a bump, he could feel something. He also states that the impact did not cause him to deviate from a straight course in lane two.

The Claimant was riding in the front passenger seat, secured by his seat belt. He states in the formal injury report that the van was struck on the right rear and that it swerved but the driver was able to maintain control.

On the date of the incident the Claimant felt back and neck pain and sought medical evaluation. When explaining the incident to the doctor, the doctor entered into the record that he was violently jarred by the impact.

The Claimant was seen at a later date by a physical therapist and is credited with alluding to, having been jolted side to side.

OPINION OF THE BOARD:

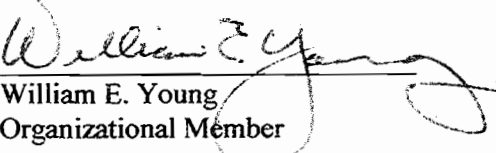
The Board is concerned with the lack of consistency in statements made concerning the severity of vehicle motion caused by the rather minor impact between the two vehicles. The Carrier must be furnished with accurate information on any incident causing personal injury. The injury itself may progress to something more severe with the passage of time but the facts of the incident remain the same. In the case at bar we don't find the necessary consistency.

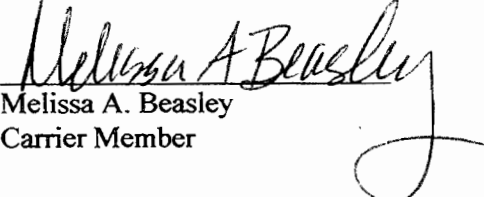
During property handling General Manager Shircliff reduced the discipline from a thirty-day record suspension to a ten-day record suspension. The Board holds that the remaining ten-day record suspension is justified.

AWARD:

Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organizational Member


Melissa A. Beasley
Carrier Member