

PUBLIC LAW BOARD NO. 5939

Case No. 54

Award No. 54

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS & TRAINMEN

-and-

BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Appeal on behalf of Conductor Jeanette M. Wallis for removal of discipline (Level S thirty day deferred suspension) from her personal record and pay 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 February 16, 2004, the Claimant hired out as a Conductor at Interbay, Washington. On September 19, 2004, she was called as the Conductor of Train S-SEACHI1-19A. Engineer R. G. Scroggins was the other member of the crew. This assignment operates through the Cascade Tunnel, a 41,152 foot tunnel connecting Interbay and Wenatchee, Washington. Employees who operate through the Cascade Tunnel are required to equip themselves with Self-Contained Breathing Apparatus (SCBA) to protect them from fumes in the tunnel.

At approximately 1:50 a.m. on September 20, 2004, Train S-SEACHI1-19A stalled in the Cascade Tunnel when two units in the four unit consist overheated. Engineer Scroggins asked the Claimant to go back to the other locomotives and try to

ascertain why the train had stalled. She donned her SCBA biopac and inspected the second and third units. When the Claimant returned to the lead locomotive, she had to remove her biopac to report to Engineer Scroggins.

After proceeding a short distance, the train stopped in the tunnel. Engineer Scroggins contacted the Dispatcher who activated fans in the tunnel and opened a portal door to provide ventilation. The Claimant and Engineer Scroggins put on their SCBA biopacs since there was heavy smoke in the lead locomotive. When the smoke cleared about 20 - 30 minutes later, they removed their biopacs. The crew was stalled in the tunnel approximately one hour before they were able to start the engines.

The next day, the Claimant felt discomfort in her chest which she attributed to the smoke she inhaled in the Cascade Tunnel. This uneasiness continued through the week. She was off work on September 24 and 25, 2004, due to tightness in her chest. On September 25, 2004, the Claimant visited her physician who treated her for smoke inhalation.

On September 26, 2004, the Claimant completed an Employee Personal Injury/Occupational Injury Report. She reported that she had been exposed to diesel exhaust in the Cascade Tunnel for about 20 minutes on September 20, 2004.

The Claimant was notified to attend an investigation to ascertain the facts and determine her responsibility, if any, for not timely reporting her personal injury and for her purported failure to properly use personal protective equipment as required. On November 1, 2004, the Claimant was advised that both charges were sustained and that she was issued a Level S thirty day deferred suspension as a result. She was also assigned probation for a period of one year.

The Carrier argues that the Claimant did not immediately put on her SCBA biopac and keep it on after the train stopped in the Cascade Tunnel. This Board respectfully disagrees, however.

When Engineer Scroggins asked the Claimant to go back to the other units in the four unit consist to determine why the train had stalled, she immediately put on her biopac. When the Claimant returned to the lead unit, she had to remove the biopac in order to report to Engineer Scroggins. She then put the biopac back on and kept it on until smoke cleared from the cab after the tunnel fans were activated.

It is noteworthy that Engineer Scroggins had his biopac on for about the same period as the Claimant yet he was not disciplined. In our view, both employees properly used their personal protective equipment while in the Cascade Tunnel. The allegation that the Claimant failed to use protective equipment as required is not supported by the evidence, in our judgment.

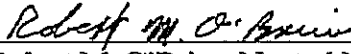
However, this Board is persuaded from the evidence that the Claimant failed to timely report her smoke inhalation.

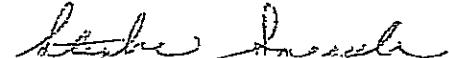
Whether this was a personal injury or an occupational illness is immaterial. The day after inhaling smoke and/or diesel exhaust in the Cascade Tunnel, the Claimant experienced tightness and discomfort in her chest which she attributed to the incident in the tunnel on September 20, 2004. This discomfort continued all week. In fact, it caused her to be off work on September 24 and 25, 2004. Despite this persistent discomfort, the Claimant did not report her injury/occupational illness until September 26, 2004, five days after she initially felt discomfort and tightness to her chest. This was untimely, in our opinion.


Inasmuch as only one of the two charges against the Claimant was sustained, the discipline assessed her on November 4, 2004, must be reduced. The Carrier is directed to remove any reference to the Claimant's reputed failure to properly use personal protective equipment on September 20, 2004, from her personal record. And the Claimant's 30 day deferred suspension shall be reduced to a 30 day record suspension.

AWARD: Claim sustained to the extent indicated in the Findings.

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

  
Robert M. O'Brien, Neutral Member

  
Stephen D. Speagle, Employee Member

  
Roger A. Boldra, Carrier Member

Dated: Oct 3, 2006