

PUBLIC LAW BOARD NO 5850

**Award No.
Case No. 116**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on November 18, 1998, the Carrier issued a Dismissal to Mr. F.G. Luna for the alleged violation of Rules 1.6 and 1.7 of the Maintenance of Way Operating Rules, effective August 1, 1996, as supplemented or amended in connection with an altercation between F.G. Luna and Messrs. M.E. Trujillo and D.L. Bradshaw while on duty October 23, 1998, at Madrone, New Mexico.

2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant is a Track Supervisor. Two employees who are under Claimant's supervision complained of Claimant's actions alleging that on the claim date, a verbal altercation took place with some very close action bordering on the physical precipitated, supposedly, by Claimant's frustrations in not being able to reach either of the two employees on the radio.

All parties were careful in their testimony to establish that the altercation was all verbal with the closest occurrence to being physical occurring when Claimant forced his way between one of the employees and the truck door he intended to open.

The Board is satisfied that the exchange was heated. Claimant's frustration with the situation he was in led him to react in the manner he did. This is evident by his remark about

the double track he has to protect, that his Supervisor does not confer with him, that he has no time to read his e-mail, etc. There was testimony that in the area Claimant and the two other employees were in, that there are dead spots in the radio communications due to terrain, and there also was testimony that they use or can use any one of five channels. When the scanner is on, it switches from channel to channel and locks in on one conversation until it is completed then moves to another. All this, the dead spots, the use of the scanner, easily could account for Claimant's failure in his efforts to contact the other two employees, yet Claimant assumed that they chose to ignore him when he called.

It is noted from Claimant's records that this is the second occurrence of being charged with an altercation and assault, the first being almost one year from the date of this assault. On the other hand, it is also noted this incident is but the third such time in Claimant's 25 year career that Carrier found it necessary to invoke the disciplinary rule.

Claimant is to be returned to service with all his seniority providing he seeks out the services of a counselor in the Employee Assistance Program that can introduce Claimant to a stress management program. Claimant must contact a counselor within 15 days of being advised of this Award, and enter into a program within 30 days (or as soon as a counselor can arrange same). Once the counselor is satisfied Claimant's participation is successful and he can now cope with the stresses he feels, then, after successfully meeting all other requirements the Carrier has established for someone returning to service after being out of service as long as Claimant has been, Claimant can resume his career with the Carrier. Should Claimant opt not to seek the services of a counselor or successfully participate in a stress management program or fail to meet the Carrier's requirements in returning to service, the dismissal will stand.

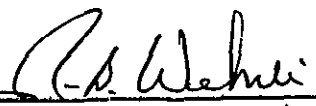
AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: 6/28/99