

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 12

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to Suspend Central Region, Foreman C. A. Martinez and Welder M. J. Baca from service for thirty (30) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of an Investigation held 1:00 P.M., May 10, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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.

Claimants, a Section Foreman and a Welder, were charged with violating several Operating Rules when, on April 30, the Welder, working under the authority of the Foreman, commenced working a section of track without train order protection. Both were found culpable of the charges and each was assessed a 30 day suspension.

The Carrier has clearly established that the Welder was without track protection, and that it was the responsibility of the Foreman to secure from the Dispatcher the necessary protection. However, just as important was the answer to the question "Why did this occur?" The Foreman was new to the area and relied upon his Supervisor for guidance so that when he (the Foreman) communicated with the Dispatcher, the proper protection would be given. The two worked it out and the Foreman sought and was granted protection which he and his Supervisor thought was correct.

It has been developed at the Investigation as to the proper designation of tracks and signals. One signal is the Belen Junction signal and the other is simply the Belen signal. Each signal controlled a segment of the track that both the crew and the Welder were working on, with the Welder about 150 feet from the section crew. It develops that the crew was working within the area controlled by the Belen Junction signal and had proper protection, whereas the Welder was working within an area controlled by the Belen signal and was without protection.

Significantly, management posted signs identifying the areas protected by either signal after this incident occurred but before the date of the Investigation. Testimony at the Investigation was to the effect that the signs greatly aided in eliminating any potential confusion as to the areas of control. This act of and by itself does bolster the Claimants' defense that they thought they had proper protection.

Everyone has to be concerned with safety. The Operating Rules governing protection for employees working on tracks must be complied with. However, at times, and this is one of those times, when confusion reigns when attempting to describe the work area and the protection necessary

for track work. The posting of signs is a means to eliminate the confusion, as would a map of the area, such as was introduced during the Investigation.

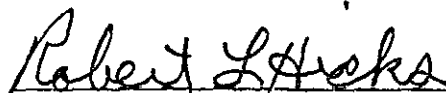
Based solely upon the facts developed at the Investigation and the records of the Claimants, thirty day actual suspension will be reduced to thirty days deferred

AWARD

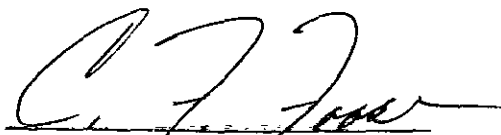
Claim sustained in accordance with the Findings.

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 postmark date the Award is transmitted to the parties.



Robert L. Hicks  
Chairman and Neutral Member



C. F. Foose  
Labor Member



Greg Griffin  
Carrier Member

Dated 10/1/96