

PUBLIC LAW BOARD NO 5350

**Award No.
Case No. 135**

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 issue a Level 5 thirty (30) day Suspension to Central Region Welder R. K. Zang was unjust.
2. That the Carrier now reinstates Claimant Zang with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of an investigation held 10:00 a.m. on October 29, 1999 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.

On September 17, 1999, Claimant with a hire date of June 9, 1968, was working in Clovis Yard cutting out old yard tracks. The track bolts were rusted tight, so

Claimant and one other cut the bolts behind the nut, then using a mundle and a punch, pounding the bolt through the bracket and rail. In the process, a piece of metal suspected to be from the punch, broke loose, hitting Claimant in the chest. Claimant suffered a puncture wound which he mistook for a cut. He simply applied a bandaid and continued the day's work.

That evening (September 17) he went to his doctor and an x-ray revealed a piece of metal imbedded in his bicep. The doctor indicated that some people live for years with the imbedded metal without suffering any side effects and some do have side effects. At that moment, Claimant went along with doing nothing, working everyday, until about the end of September when an infection developed, necessitating the surgical removal of the metal bit. Claimant reported the injury September 28, 1999.

Because of the late reporting, an investigation was scheduled and finally held on October 29, 1999, after several mutually agreed postponements. Claimant was suspended from service for 30 days for his late reporting.

There is no disputing the facts. Claimant admitted to the violation stating only that he had difficulty in talking with his Supervisor, plus they had a derailment on this day and he did not want to bother anyone.

Discipline is warranted, but under the circumstances, a 30 day suspension is somewhat harsh. Claimant did have one prior discipline assessed, formal

reprimand, but he also has an accommodation entry, "for his tremendous contribution on the Thayer Subdivision Blitz."

The 30 calendar day suspension is modified to a 10 calendar day suspension. Claimant is to be paid for all lost time in excess of the ten calendar days as provided for in the Agreement.

AWARD

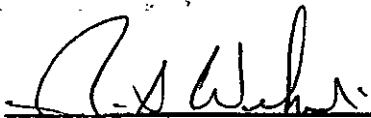
Claim sustained in accordance with the Findings.

ORDER

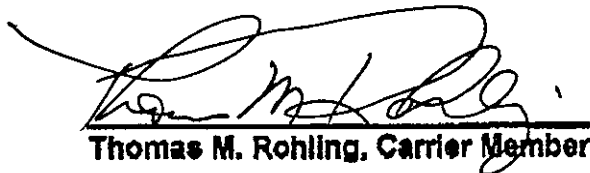
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: February 4, 2000