

PUBLIC LAW BOARD NO. 5850

**Award No. 163
Case No. 183**

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 Formal Reprimand with one (1) year probation to Southern Region Welder M. F. Parker was unjust.**
- 2. That the Carrier now expunge Claimant Parker's record and pay for all wage loss as a result of investigation held at 9:00 a.m. on February 15, 2001 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 Claimant violated the rules enumerated in the decision, Formal Reprimand and one (1) year probation on his record 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.

Claimant was charged with not looking when he crossed two main lines and a yard lead track.

The Carrier witness testified he saw Claimant when he moved to the driver side of the company truck and crossed three tracks without turning his head either left or right until he came to the fourth track, the scale track, upon which sat an idling engine. This occurred at about 7:50 AM according to Carrier witness.

Claimant's witness, who drove the company truck and who was sitting in the driver's side watching Claimant cross the track testified it was between 8:10 AM and 8:30 AM when this occurred. This witness also testified that safety, being everyone's business, and particularly since Claimant was his responsibility, he did observe Claimant crossing the tracks and had he not proceeded safely he would have alerted Claimant of his responsibility. This witness further testified that Claimant did look both ways before crossing the tracks.

Claimant testified that when they were approaching the area wherein they were scheduled to stop, he looked for traffic on the line and saw nothing. He also testified when he stepped out of the passenger's side, he looked to the left to see if there was any movement.

Claimant did not, however, look both ways when he crossed each of the three tracks. Claimant's negligence can perhaps be explained by two factors; one being this was form B protected territory and the second being the safety first lecture cautioning everyone to be aware of their footing.

Under the circumstances as outlined above, and in consideration of the 21 years of service marred only by four AWOL charges (3 in 1980, 1 in 1985), that a record mark is too severe.

One of the purposes of discipline is to correct violations and by so doing let it be

known to Claimant and others that a lax attitude concerning the Safety Rules will not be tolerated. This has been accomplished.

The permanent record entry is to be removed from his personnel file and converted only to a letter critical to his conduct as a warning to necessitate that he must stay alert to stay alive. If Claimant has lost any time, he is to be paid in accordance with the Schedule Agreement.

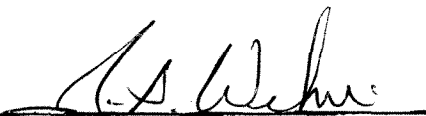
AWARD


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: June 1, 2001