PUBLIC LAW BOARD NO. 5850

Award No. 170
Case No. 170

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue employes J. C. Pehrson and M. Garcia, Jr., a Level S Record Suspension for five (5) days and a one year probation was unjust.

2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held at 10:00 a.m. on March 9, 2001 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that either Claimant violated the rules enumerated in their decision, and even if they had violated the rules enumerated in the decision, a record suspension 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 Claimants 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 February 20, 2001, the Carrier notified each Claimant of an investigation to develop the facts concerning the work performed by each Claimant was insufficient and

not complying with FRA standards when on February 2, 2001, they failed to replace 20 Pandrol clips after they had completed a welding assignment.

During the investigation, four major facts were established by the Claimants:

1. The charge of violating specific rules on a specific date did not occur. On February 2, 2001, neither Claimant worked at the location the Carrier felt was left incomplete.

2. In the matter of not inserting the Pandrol clips, it was developed there was a shortage of these clips and on the specific dates of January 29 to February 2 and even later, repeated requests were made for these clips which did not arrive at the work location until February 28, 2001.

3. The Carrier's contention that each Claimant left the track in an unsafe condition is tempered by the fact that on the date they actually worked the LeGrand Switch, a Foreman was responsible for securing and releasing the Form B and did so, even without the installation of the clips.

4. Regarding not building the track sufficiently to meet the FRA standards, one Claimant said he had never been advised of those standards and the Carrier did not rebut.

The Carrier has not sustained its burden of furnishing substantial evidence of either Claimant's responsibility for the charges assessed. In all claim and discipline matters, four basic questions must be answered. Who did what, when and where. The when was incorrect, thus it made the who, the what and the where unanswered as well.

Under these circumstances, the claim will be sustained and traces of this investigation are to be removed from each Claimant's file, and each Claimant is to be paid for time lost as provided for in the Agreement.

AWARD

Claim sustained.

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

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: July 10, 2001