

PUBLIC LAW BOARD NO. 5850

**Award No. 171
Case No. 171**

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 Machine Operator J. F. Medeiros a Level S Record Suspension for fifteen (15) days and two-year probation was unjust.
2. That the Carrier now rescinds their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held at 1300 hours on March 9, 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 the Claimant 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 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 is a long time Machine Operator on a ballast machine.

On February 9, 2001, an Acting Roadmaster in a conversation with an Equipment

Maintainer concerning Claimant's machine determined that it had not been greased, the bolts had not been tightened, and the U joints were dry. It also was discovered that the last entry in the machine log book was January 18, 2001.

An investigation was scheduled that was finally held on March 9, 2001, and on April 6, 2001, Claimant was advised that he was assessed "a level 5 record suspension of 15 days...."

The Carrier sustained its burden of proof by furnishing substantial evidence of Claimant's culpability for the charges assessed.

Part of that defense was that Claimant was off on vacation for five weeks returning on January 2, 2001, but this does not excuse the condition of the machine as found by the Equipment Maintainer on February 9.

It was also brought forth that the machine created lots of dust in its operation and perhaps that was why it was dry, but the fact that it raises a dust storm is even more reason that the machine should be kept greased and oiled. Also, sometime between January 2, 2001, and February 9, 2001, the bolts should have been checked and tightened if loose, but obviously none of this occurred.

Furthermore, pursuant to the Rule, Claimant is obligated to keep a log of grease, oil and/or loose bolts that were tightened, but Claimant did not keep the machine log up to date.

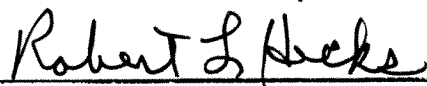
The fact that Claimant may soon retire does not negate the discipline assessed as his record contains an entry of discipline assessed in the summer of 1998, for the very same reason as in this instance.

AWARD

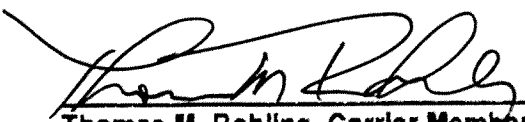
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: July 10, 2001