

PUBLIC LAW BOARD NO. 5850

Award No. 172
Case No. 172

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 Non-Serious 10-day Record Suspension to Central Region Employee D. M. Stokes 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 10:00 a.m. on March 27, 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.

On March 8, 2001, Carrier wrote Claimant notifying him of an investigation:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violation of Rules(s)

1.1, 1.1.1, 1.1.2 and 1.6 of the Maintenance of Way Operating Rules, in effect 12:01 a.m., Central time, January 31, 1999, including revisions up to April 2, 2000 as amended or supplemented and Rule S-7.7 of the Maintenance of Way Safety Rules, in effect 12:01 a.m., Central time, January 31, 1999, including revisions up to October 10, 1999, as amended or supplemented, concerning your alleged failure to use proper tools to perform task which resulted in personal injury at MP 511.6, Panhandle Subdivision, Amarillo Division, at approximately 4:00 p.m. on Wednesday, March 7, 2001, while assigned as Welder on Headquarter welding truck in Pampa, Texas."

On April 17, 2001, the Carrier advised Claimant of the results of the investigation and the assessment of a, "Non-serious 10-day Record Suspension."

There is no controversy concerning this matter. Claimant, in completing an injury report, states, as a cause for the injury, that he used the wrong tool.

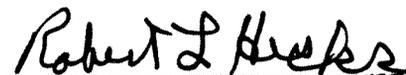
Regarding the discipline assessed. Claimant has not had a reportable injury since he commenced service with the Carrier in 1996. He suffered a lacerated thumb which he will undoubtedly remember for some time. The 10 day record suspension is reduced to a record entry of facts.

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: July 10, 2001