

**PUBLIC LAW BOARD NO. 5850**

**Award No. 184**  
**Case No. 184**

**PARTIES TO DISPUTE:**  
**(Brotherhood of Maintenance of Way Employees**  
**(The Burlington Northern Santa Fe Railroad (Former**  
**(ATSF Railway Company)**

**STATEMENT OF CLAIM:**

- 1. The krrbr violated the Agreement when on Dewmber 27, 2000, Mr. J. D. Waits was issued a Level-3, 30-day record ● uspension with a one ywr probationary period for violation of Maintenance of Way Operating Rules 10.3 and 6.3.1 in connection with his allegedly fouling the track without protection on August 11, 2000 between Noyt and Milano.**
- 2. As a conwquence of the Carrier's violation referred to above Mr. Waits shall have his record expunged of the above referenced discipline.**

**FINDINGS**

**Upon the whole record and all the ● vldenw, the Board finds that the parties herein are wrrier and ● mp4oyee within the meaning of the Railway Labor Act, w mended Fur&her, 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.**


**The original notice dated August 31, 2000, reads as follows:**

**"Dear Mr. Waits:**

**Arrange to be present at a formal investigation to be held on September 22, 2000 at the Superintendent Office at 2100 Baker Blvd., at 10:00 a.m. The purpose of the investigation b to ascertain the facts end determine your responsibility, if my, with the violation of Maintenance of Way Operating Rub 10.3 and 6.3.1.**

**Arrange for representative and/or witnesses in ● wordanw with governing**

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provisions of prevailing schedule rules. Please acknowledge receipt by affixing ☐☐☐ signature  the ☐ pmw provided on copy of the ☐ tteched letter."

The ☐ bove eohedubd hearing was postponed, and the postponement letter read the same.

It ww not until the letter of October 4, 2000, ☐ g8ln postponing the investigation that me following ww added to the investigation notice:

"...when you ☐ lbgedly fouled the track without protection on August 11, 2000 between Hoyt and Milano..."

The investigation was finally held on December 1, 2000, after which Cbiment was ☐ eeeeeed a 26 day record suspension.

During the investigation, Claimant's Representative asked that the investigation be cancelled contending me October 4, 2000, postponement notice was the first time they were advised the date, the location and the event that prompted the investigation, and mat notice was clearly outside the Agreement time limits.

In the on-property handling, Claimant's Representative cited the October 4 notice of postponement es the first time the charge letter contained a date, and then charged that the first notice dated August 31, 2000, setting an investigation date of September 22, 2000, was not filed promptly as defined by several Public Law Boards based upon the same parties here in dispute and the same Discipline Rub ☐ e in effect now.

The word prompt or "promptly" wn have different meanings to different peopb, and since there have been Awards on the same point defining "promptly" as thlrty days, this Board has no ☐ lhW than to abide thereby.

Contract language b determined by the parties who wrote the contract and Awards rendered defining the written language.

Whether the first letter setting the September 22, 2000, investigation based upon an incident not defined until the October 4, 2000, letter is considered as being untimely, or the October 4, 2000, letter was untimely, it is this Board's opinion that the notice of charges did not meet the "promptly" criteria.

Without considering the merits of the case, the claim is sustained. Claimant is to be paid for any time lost as provided for in the Schedule Agreement, and all traces of this investigation are to be removed from his file.

**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, Chairman & Neutral Member

  
Rick B. Wehrli, Labor Member

  
Thomas M. Rohling, Carrier Member

Dated: December 27, 2001