PUBLIC LAW BOARD NO. 5850

Award No. 190
Case No. 190

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on August 17, 2001, when it dismissed Mr. C. A. Vigil from service for allegedly violating Maintenance of Way Operating Rule 1.1.3, 1.2.5, 1.6, and 1.13, for a late report of an injury on June 27, 2001.

2. As a consequence of the Carrier's violation referred to above Mr. Vigil shall be returned to service, the discipline shall be removed from his personal record and he shall be compensated for all wages lost, if any, in accordance with the Agreement.

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, on June 29, 2001, filed an injury report contending he originally suffered an injury sometime in mid-May and/or June 5, 2001.

On June 11, 2001, Claimant had a conference with a Roadmaster, the Manager of Safety and the Division Engineer regarding his injury claim. At that conference, when only the Roadmaster was present, Claimant stated both the mid-May and June 5 injuries

were work-related, but when the Division Engineer and the Manager of Safety joined in, Claimant stated it was not work related; that perhaps it occurred while he was installing satellite dishes for TV (something he was doing on his off days). Regarding the mid-May incident, only one other employee was aware of it (according to Claimant) and he was employee Barber, his Foreman at the time. At that time, Claimant alleged he fell off the back of the truck. A conversation between the Roadmaster and the Foreman revealed he knew nothing of the incident.

Claimant professed he was somewhat intimidated by various Supervisors, and that is why he was reluctant to report the injuries when they occurred. This despite the fact that Claimant attended a number of training classes in 1998 thru November, 1999, relating to safety rules, back plus and health on track. Surely during those sessions, it was stressed the necessity of reporting injuries when they occur. In fact, the Carrier has put in place the soft tissue type report with a 72 hour window which would permit an injury filing if at first the individual thought it was nothing other than an ache or pain that would dissipate with aspirin and/or a hot tub soak.

Claimant did know about the 72 hour window for soft tissue type injuries, thus he knew there was limited time to file an injury report, yet he let the time lapse.

In fact, Claimant has not furnished one solid reason for filing a late injury report that could possibly mitigate the charges assessed. The Carrier did furnish substantial evidence of Claimant's culpability for the charges assessed. The discipline stands.

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: May 29, 2002