

**PUBLIC LAW BOARD NO. 8850**

**Award No. 194**  
**Case No. 194**

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

**STATEMENT OF CLAIM:**

- 1. The Carrier violated the Agreement on May 8, 2001, when it dismissed Mr. R. L. Goeson from service for allegedly violating Maintenance of Way Operating Rule 1.6, Maintenance of Way Safety Rule - Safety Supplement, 14.2, and Engineering Instruction, Chapter 14, 14.2.4, when he allegedly cut through a hydraulic hose with a hack-saw, on February 13, 2001.**
- 2. As a consequence of the Carrier's violation referred to above Mr. Goeson 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 was charged with allegedly disregarding the safety of himself and co-workers when he used a hacksaw to cut through a high pressure hydraulic line that resulted in an injury to himself.**

**Following the investigation held on April 20, 2001, Claimant, in a letter dated May**

8, 2001, was dismissed from Carrier's service and in the same packet was furnished a copy of the transcript.

For some reason, the first two letters of discipline were never received by the Claimant, but on the third attempt, was sent UPS next day service and was delivered to his residence on May 17, 2001.

Cutting through all the rhetoric and reaching the bare bones, Claimant did exactly as charged. He used a hacksaw to cut a hydraulic line that held a 4000 lb per square inch of pressure that was a part of a malfunctioning rail extender unit the welders were using in attempting to close a gap in the rail sufficiently to allow them to weld the joint.

There are, however, extenuating circumstances that mitigate the discipline. It was established that no one at the scene of the incident had any training in the use of the rail extenders, and even though efforts were made to get it working, they tried to change the hose hook ups, but one hose could not be changed because they could not loosen the nut attaching the hose to the unit.

Claimant, disregarding several coworkers advice advising him not to, secured his welding gloves, his face protector, got a hacksaw and cut into the line with 4000 lbs of pressure per square inch. The force of the fluid penetrated his hand and he was hospitalized for three days.

Claimant contends the gauge he looked at registered zero pressure where others said it registered 4000 lbs. Claimant also stated he never heard anyone cautioning him about cutting the line, and this may be so as testimony from one witness stated Claimant is deaf in the left ear.

Despite the lack of training on the rail extenders, and no instruction booklet,

Claimant has been with the Carrier since April, 1976, and as far as the Board can tell, has been a welder all that time. He surely would not hacksaw one of the live feeds from the welding tanks, thus it is difficult to understand why he would cut into a line that has been constructed to withstand up to 10,000 lbs per square inch pressure. What he did was not the smartest move he has ever made.

The Organization raised a procedural challenge to the whole disciplinary process by first contending in its letter of June 8, 2001, neither Claimant nor they had been timely furnished a copy of the disciplinary notice and a copy of the transcript.

Carrier furnished proof that Claimant received both on May 17, 2001, which was timely, and the Organization received their copy when they received Carrier's letter of August 15, 2001, responding to their June 18, 2001, appeal of the discipline.

The Organization is entitled to a copy of the investigation. It is true the Discipline Rule does not provide for the Organization to also receive a copy of the disciplinary letter, but it just makes good sense to furnish a copy of that notice letter with the transcript.

The Organization cited Third Division Award 31802 in support of their procedural argument, but that involves a separate Disciplinary Rule than we are here concerned. Nevertheless, the existing Agreement does obligate the Carrier to furnish the Organization with a copy of the transcript. That should be done when Claimant is mailed his copy. Repeated failures to comply can place the Carrier at risk of having a discipline overturned.

Claimant, to reiterate, has been with the Carrier since April, 1976, with only two disciplinary infractions; one, dismissed in 1981 from which he was obviously reinstated,

and a 1996 progressive intervention assessment. What Claimant did was thoughtless and dangerous, but he was the only one who suffered. He has not worked since March 6, 2001. The dismissal is reduced to a long suspension. His seniority is to be reinstated, but there is no pay for time lost.

**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: May 29, 2002