

PUBLIC LAW BOARD NO. 5850

Award No. 198
Case No. 198

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 February 20, 2001, when it issued Mr. J. T. Bottomley, the Claimant, a 30-day Record Book Suspension for allegedly violating Maintenance of Way Operating Rule 1.6 by misleading the Carrier about his rules qualification on January 3, 2001.
2. As a consequence of the violation referred to above the Carrier shall remove any mention of the incident from Mr. Bottomley's 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 displaced a Trackman/Flagman position that required the occupant to be book of rules qualified. The displacement was handled through the Kansas City placement center.

As this Board understands, to work as a Trackman/Flagman the individual must be book of rules qualified. This is achieved by successfully completing classes or

passing tests designated 1690D and 1690DD. After becoming book of rules qualified, the FRA requires yearly recertification and the Carrier does this through a class session called Know Your Limits.

When Claimant reported for work as a Trackman/Flagmen on January 3, 2001, the Roadmaster asked Claimant if he had been to and passed a Know Your Limits 2000 class. Claimant responded affirmatively, and when asked, Claimant also named the class instructor and the location.

The first half of the workday, Claimant was not required to secure track and time protection, but in the afternoon they wanted to perform some work on the main line which would require track and time protection not only for the track the work train occupied, but also for the adjacent track as the heavy equipment, when in operation, would foul that track as well.

The Roadmaster overheard the radio contact Claimant made with the Dispatcher and determined something was amiss. He then questioned Claimant again on his qualifications, and from his answers the Roadmaster believed him not to be qualified although Claimant did affirm, again, his attendance at a Know Your Limits 2000 class.

Claimant opted not to attend the investigation and he did so at his own peril. But even in absentia cases, the Carrier still must furnish substantial evidence of Claimant's culpability.

Apparently, the transcript of Claimant's record listed classes and training sessions he attended through June 30, 2000. In that short list was an entry for a February 2, 2000, Know Your Limits class. Focusing on that entry, the Carrier determined it was an error as the instructor stated that Claimant was never at that class

and that the instructor's name was not even close to the name Claimant gave. Thus, it was their determination that Claimant was not correct when he stated not once, but twice, that he had attended and passed a Know Your Limits class.

But this Board finds in Claimant's personnel transcript dated April 24, 2001, that on December 18, 2000, there appears an entry indicating that Claimant was in attendance at a Know Your Limits class. Apparently, this record was not available to those conducting and testifying at the January 24, 2001 investigation.

It could be that Claimant did attend this class and when he responded affirmatively not once, but twice, to the question, "Have you attended a Know Your Limits class" he was not dishonest.

Furthermore, it was clearly established that the Know Your Limits classes are intended to recertify on a yearly basis those who are book of rules qualified, but passing the recertification test, if that did indeed occur, does not certify that the individual is book of rules qualified.

Qualification comes only through writing the book of rules and passing a written test on the rules. This process, as stated before, is listed as 1690D (writing the book of rules) and 1690DD (passing a written test on the rules). There is nothing in Claimant's file to indicate he was book of rules qualified.

The Carrier has not established that Claimant was not in attendance on December 18, 2000, for the Know Your Limits class, thus Claimant cannot be labeled as being dishonest. If the Roadmaster had asked Claimant if he was book of rules qualified and received an affirmative response, a violation of Rule 1.6 could have been upheld, but in this instance the Carrier has not established that Claimant gave misleading information.

as to his qualifications.

The claim as presented will be sustained.


AWARD

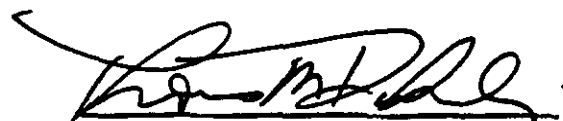
Claim sustained.

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: August 14, 2002