

PUBLIC LAW BOARD NO. 5850

**Award No. 210
Case No. 210**

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 January 3, 2002, when it issued the Claimant, Mr. D. M. Stokes, a 30-day record Book suspension, for allegedly violating Rules 1.1, 1.12, and 1.6 of the Maintenance of Way Operating Rules, Rules S-1.1 and S-1.5.2 of the Maintenance of Way Safety Rules, Rule 1.13 of the Engineering Instructions, and Rule 1.6.4G of the Track Welders Manual, causing an injury to his welding partner.
2. As a consequence of the violation referred to in part (1), the Carrier shall remove any mention of the incident from the Claimant's personal record, and make him whole for any wages lost account of this incident.

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 November 18, 2001, the Carrier advised Claimant of its intent to convene an investigation:

"...ascertaining the facts and determining your responsibility if any, in connection with your possible violation of Rules 1.1, 1.1.2, 1.6, and 6.3.4 of the Maintenance of Way Operating Rules, in effect, January 31, 1999 as supplemented or amended, Rules S-1.1 and S-1.5.2 of the Maintenance of

Way Safety Rules, in effect, January 31, 1999, including revisions up to October 10, 1999 as supplemented or amended, Rule 1.1.3 of the Engineering Instructions and Rule 1.6.4G of the Track Welding Manual, in effect February of 1999, as supplemented or amended, in connection with your personal injury sustained at approximately 1:08 p.m. on November 12, 2001 at East Canadian, while working as Welder headquartered at Pampa, TX, on the Kansas Division."

Following the investigation, Claimant was assessed a 30 day Record Suspension.

Rule 1.6.4G reads:

"When possible, place all equipment at least 8 feet from the track, such that it will not be struck by a train or trip those working near the track."

A power cable running from the truck to the worksite was laying outside the track but on the tie ends. When this particular train went by, somehow something on one of the cars snagged the power cable, drawing it tight before it snapped. Claimant's partner was tangled in the cable and was thrown to the ground on his shoulder. He was not seriously injured, but it could have been much worse.

If Claimant had followed the 8 foot rule, a rule he was familiar with, neither the injury nor the damage to the cable would have occurred.

Claimant was in violation of the aforementioned Rule. A review of his record reveals this was his third brush with the disciplinary procedures in 2001, and once in 2000. Under the circumstances, the discipline was not out of line.

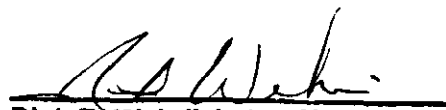
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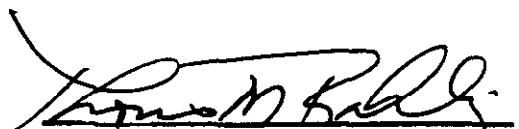
Claim denied.

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: December 16, 2012