

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 233**

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 allegedly violated the Agreement when investigation was held on October 22, 2002, and Mr. Gerardo N. Lopez was disqualified from working Foreman positions for allegedly violating Maintenance of Way Rule 1.13 in connection with improper placement of temporary speed restrictions in accordance with the Engineering Instructions, Table 4-1, Temporary Speed Restrictions for Track Work.**
- 2. As a consequence of the Carrier's violation referred to above Mr. Lopez shall be reinstated with seniority, vacation, all rights unimpaired and pay for all wages lost commencing October 14, 2002.**
- 3. That any mention of the charges relating to this incident shall be removed from Mr. Lopez' personal record.**

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.

The Carrier on an unspecified date disqualified Claimant as a Foreman ram rodding a production gang.

The disqualification was preceded by Claimant's alleged ignorance of Roadmaster's instruction in connection with his failure to check the track condition and rail temperature after the undercutter had completed its work. To protect man and machinery, Claimant then placed a 10 MPH speed restriction on the rail just undercut.

From Claimant's testimony as recorded in the Investigation transcript that this assignment and the responsibilities required when coupled with the warning of being an "outsider" overwhelmed Claimant.

Prior to the assignment, Claimant stated he had worked as a Foreman for five years, but his record reflects that during this five year period, Claimant was not without incident as Claimant was cited for and found culpable for the charges. One incident occurred in 2001, and two within a four month span in 2002.

It is understood there exists different type Foreman positions ranging from production gangs to section crews permanently headquartered. The production crews are undoubtedly more stressful than the local small gangs.

It is this Board's decision that his Foreman rights be reinstated with the caveat that he cannot displace or bid on production gangs for a period of one year from the date his seniority is restored. After the one year, the Carrier can then determine if his performance as a Foreman during this year has improved sufficiently to lift the restriction on production gangs.

There is no pay for any money Claimant may have lost because of the disqualification. The Carrier did have concerns and provided sufficient evidence to support the disqualification up to the date of this Award.

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
William L. Yeck
as of August 21, 2003

Dated: Sept. 4, 2003