

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 241**

**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 March 15, 2002; when, without sufficient reason, it disqualified the Claimant, Mr. T. D. Barber, from working a Foreman's position on the Kansas 700 Seniority District; after 2 occasions in which the Carrier alleges the Claimant placed slow orders in the wrong locations.
2. As a consequence of the violation referred to in part (1), the Carrier shall restore all Claimant's Foreman seniority rights, remove any mention of this incident from the Claimant's personal record, and make him whole for all wages and benefits 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.

Claimant was working as a Foreman when, on March 15, 2002, he advised the Roadmaster that he had made a mistake with a slow order, but that he had caught the error and corrected it verbally. According to Claimant, he first placed the slow order between 889.4 to 889.5 when it should have been between 898.4 to 898.5.

The second incident occurred three months earlier when Claimant was called to go out and check the track at a crossing where a train/car accident occurred.

Claimant contended he went to start the company truck but it would not start. He tried jumping the battery with his own car but he ran his battery down. He did not inspect the accident site, but simply placed a slow order for the area of the accident.

When asked if he never got to the accident site what prompted him to issue a slow order without actually inspecting the site, and his reasoning was that several trains had already crossed the site since the accident occurred so that he thought the slow order would be sufficient.

It later developed at the investigation that he just assumed several trains had passed. He never confirmed this fact.

Slow orders are issued to cover sections of track where the track has been disturbed by section people or at accident sites to protect trains and employees in the event the track is not safe for traffic.

Claimant did correct his own mistake in the December incident and related his error to his Supervisor. About both incidents he was candid in his reasons for the errors.

The discipline process can be viewed as a means to correct an employee's wayward ways, or as an example to others. In this instance, this Board believes the disqualification of Claimant as a Foreman has impressed Claimant with his absolute need to follow the Rules. His position as Foreman is to protect those whom he supervises as well as himself and the Carrier's property.

His Foreman's rights are reinstated but there is no pay for time lost. Claimant must understand this is strike two and one more such infraction of the Rules can very


will lead to permanent loss of his Foreman's rights or even loss of seniority.


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

  
William L. Yeck, Carrier Member

Dated:

2/17/04