

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 272**

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 14, 2005, when it issued the Claimant, Mr. V. J. Laney, Jr. a 30-day record suspension for allegedly failing to conduct a job briefing, and being careless of others resulting in a personal injury to another employee; in violation of Rules 1.1 and 1.6 of the Maintenance of Way Operating Rule.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove any mention of this incident from his personal record, and make him whole for all 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 the date of the incident, Claimant, a truck driver, was assigned to take four cross ties to the point needed. He also brought a back hoe that was on a trailer which was connected to the truck.

At the point the ties were needed, Claimant, who had no machine operator's data nor had he ever been qualified by the Carrier to operate the back hoe, unloaded the

backhoe with the intent to use the machine to unload the four cross ties.

The truck was a fairly large dump truck with high sides. Because of the location of the ties in the truck and the high sides, he experienced some difficulty because he was unable to see the ties from the seat of the backhoe.

A coworker noted Claimant's difficulty in snaring the ties and climbed into the bed of the truck with the intent of moving the ties to a point where they would be visible. His coworker tried to convey to Claimant his intent verbally, but because of the machine noise Claimant could not hear and leaned out of the cab for better communications. In doing so, his left leg inadvertently brushed the swing lever, causing the boom on the backhoe to move, knocking his coworker off his feet into the side of the truck.

The incident occurred on November 22, 2004, but was not reported until November 29, 2004, when the coworker complained of back pain.

As stated earlier, Claimant had no standings as a machine operator, but testified, without objection, to the fact he had operated a backhoe hundreds of times. If Management condoned Claimant's operation of the backhoe on prior occasions, they cannot now complain or discipline Claimant for doing so in this incident.

What violation did take place is a lack of a briefing whereat the coworker should have discussed with Claimant his intent before he climbed into the bed of the truck.

A briefing is required prior to starting a project so that all are on the same page to prevent just what occurred here. This Board recognizes that accidents do happen, but is of the opinion in this case that had Claimant and his coworker discussed the matter before climbing into the truck bed, the injury to the coworker would not have occurred.

Discipline is assessed for several reasons, but in this instance it was to impress

upon Claimant the need for a briefing. Claimant has been with the Carrier off and on since July, 1969, then permanently from March 25, 1976. His record reveals this incident is the first such investigation he attended as a principle.

A 30 day record suspension assessed in this instance does not impose a suspension from service, but does put him on probation, so to speak, for three years.

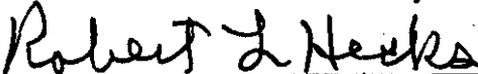
Because of Claimant's illy-white work record, this Board reduces the discipline to a reprimand.

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: June 30, 2005