

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 273**

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. E. M. Mascote, a 30-day record suspension for allegedly failing to conduct a job briefing, being careless of themselves or others, and failing to properly report a personal injury, resulting in a personal injury to the Claimant; in violation of Rules 1.1, 1.6, and 1.2.5 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 was working with a crew whose assignment covered changing out four defective cross ties. The ties arrived at the scene in a dump truck which was pulling a backhoe on a trailer. The backhoe was to be used in handling the ties.

Claimant noted the difficulty the backhoe operator was experiencing in an attempt

to unload the ties hidden from his view from the cab of the backhoe because of the high sides on the truck.

In lieu of approaching the backhoe operator and advising him of his intent to aid the operation, Claimant climbed into the truck, shouting back to the backhoe operator of his attempt.

The backhoe operator leaned his head out of the backhoe cab, and in doing so his left leg brushed the swing lever for the boom, knocking Claimant into the tailgate of the truck.

Claimant's error which led to the knock down and his pain is due to not having a briefing with the machine operator. Chances are the machine operator would not have had to lean out of the cab to hear Claimant's explanation of his intent which in turn resulted in his left leg hitting the swing lever and Claimant would not have been knocked down.

Claimant worked the rest of the day on the 22nd, a full day on the 23rd, and a full day on the 24th. He was off on the 25th, 26th (Thanksgiving holiday), and off on the 27th and the 28th his rest days, and on Monday the 29th he formally reported the injury.

Claimant did state he told his Supervisor on the 22nd, but when asked if he wanted to file a report, Claimant advised he did not, thinking with the two workdays remaining to be worked followed by four days off that the muscular ache he experienced would go away.

Claimant's Supervisor was in error by not insisting he file an injury report to protect himself and the Carrier despite Claimant's disdain for the paperwork required in reporting.

The Carrier did establish Claimant's culpability for the charges assessed, but a review of Claimant's work history leads this Board to believe a 30 day record suspension with a 3 year probation is too harsh in view of Claimant's work record. He hired out April 12, 1978. His record is squeaky clean and the only injury record is that which he sustained in this incident.

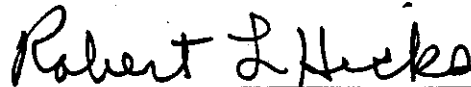
Under these circumstances, the 30 day record suspension is reduced to a formal reprimand.

AWARD

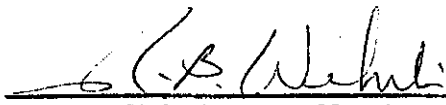
Claim sustained in accordance with the Findings.

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