

PUBLIC LAW BOARD NO. 5860

Award No. 285  
Case No. 285

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employer  
(The Burlington Northern Santa Fe Railroad (Former  
(ATSF Railway Company)

**STATEMENT OF CLAIM:**

1. The Carrier violated the Agreement on August 19, 2005 when Claimant, D. W. Wilson, was disqualified as a welder for failure to perform assigned welding duties in accordance with the BNSF Track Welding Manual.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant's welding seniority, vacation and all other rights restored, remove any mention of this incident from his personal record, and make him whole for all time lost beginning August 19, 2005 forward.

**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 at the time of the investigation was a Welder for the Carrier and had been since July of 2002.

On June 23, 2005, the Carrier wrote Claimant advising him that an investigation was scheduled for the alleged procedural violations for work performed:

"...June 7 and 8, 2005, at East End Walnut, on the Stockton Subdivision of the California Division, in possible violation of Rules 1.4.4 (Quality and Quantity of Work); 11.63 (Frog Inspection Checklist); 11.11.15 (Final Check After Welding); 11.12.1 (H) (Finish Grinding General); 11.12.6 (D) (Grind and

**Radius** Ths Frog Point Tip); and 11.12.8 (Establish The **Proper Radius** On The Gauge **Corner** Of The Frog) of the Track **Welding** Manual Rev. 9-99."

Following the investigation, Claimant was **disqualified** as a Welder.

Claimant **testified** he knew the **conditions** he left the frog **in** on Juns 3, 2005 (not June 7 & 8, 2005), as he could not finish the work in one day. Claimant stated he left the frog in a **condition** that **permitted** normal train operations and this **fact** has been **verified** as no slow orders **were** bsusd.

Claimant stated he had **the intention** of **returning** the **next** day to **finish** the weld job, but he **was assigned** other work, **He finally did** return and finish the **weld** but the notke of **the investigation** was **already** issued.

In matters of **discipline**, the burden of proof rests upon **the shoulders** of the Carrier. The only proof **established** was that Claimant **did** work on June 3, 2005, **leaving** the, frog in **condition** **permitting** normal train operations. When Claimant **did** finish the weld, other **Supervisors** **were** **satisfied with** the work.

In **this Board's** opinion, the **disqualification** as a Welder was an **over-reaction**. Surely others noted the **unfinished weld** after June 3 but **before** June 7, but **said nothing** to anyone **leaving this Board** to **believe** although **the** work was not completed, **It** was a **satisfactory temporary solution**.

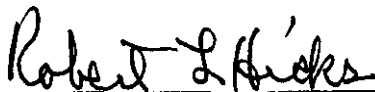
The claim **is sustained**. Claimant is to be **paid** the **difference** between what he could have earned had he not been **disqualified** and what he actually **earned** from the date of **disqualification** until **hk** Welder status **is reinstated**.

### **AWARD**

**Claim sustained.**

**ORDER**

Thk Board, after **consideration of the dispute identified** above, **hereby orders that** an award favombb 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**



**Samantha Rogers, Carrier Member**

Dated: *April 26, 2006*