

PUBLIC LAW BOARD NO. 5850

**Award No. 286
Case No. 286**

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 July 15, 2005 when Claimant, J. R. Sadler, was suspended for 30 days for violation of Maintenance of Way Operating Rules 1.1.3, 1.2.5, 1.2.7, and 1.5 and Maintenance of Way Safety Rule S-1.2.8 for late reporting of an injury and misrepresentation of the facts concerning said injury.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant's 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 from July 15, 2005 through August 14, 2005.**

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 Machine Operator with a mini tie gang. On June 14, 2005, Claimant was "nipping ties" when he fell after the bar he was using slipped. Claimant then did complain of his back hurting and told the Foreman but gave no circumstances to how the back soreness occurred. On the 15th or the 17th, he advised his Foreman he had to be off work Friday, June 19, 2005, to see a doctor, but again he did not relate the specifics of the incident that led to the sore back, nor was he asked by

the Foreman.

Because no injury report had been filed and because Claimant went to a doctor about his back, an investigation was scheduled:

"...to develop the facts and place responsibility, if any...concerning your alleged late reporting of personal injury occurring on or about June 14, 2005, and your alleged misrepresentation of the facts concerning same, while working as a machine operator on the Division Maintenance Gang on the Gallup Subdivision."

Following the investigation, Claimant was assessed a 30-day actual suspension for late reporting of an injury.

The Board finds that the Carrier furnished sufficient evidence that supports the charges assessed and condones the discipline.

Claimant was not only late in reporting the injury but he was also evasive and reluctant to tell his Foreman that he hurt his back "nipping ties."

Claimant stated he told his Foreman but no details were given, nor did the Foreman ask any questions as to the cause of the sore back. A fellow worker who was within 2 feet of Claimant saw him fall to his hands and knees when the bar he was using slipped, but Claimant stated he fell backwards, not forwards.

Claimant's Foreman did not ask why he was going to see a doctor on a Friday. After the doctor visit, Claimant then called the Director of Administration on a Monday after seeing a doctor and left a recording. The Director then called the Division Engineer relating what Claimant told her and furnished the Division Engineer a copy of the phone message left by Claimant. The message Claimant left was as follows:

"Yes, Bret, this is Josh Sadler and I was injured on the job Tuesday of last week. And I, I've been to the doctor Friday. And I'm supposed to come back and see him tomorrow to see what he said if I can return to work or not. And I was just needing to tell somebody I guess. I've told my foreman,

which called me a cell phone else I guess I may be fired over this whole deal. But I guess if you would give me a call back at 805-796-7354, thank you."

The Division Engineer contacted Claimant to find out what happened. Claimant gave his version of the bar slipping while he was "nipping" ties that caused him to fall backwards onto the adjoining track.

The only really positive that was established in the investigation was that Claimant did fall. It is also clear that there is confusion as to when he told the Foreman.

Claimant is a new employee just a week or so beyond the 60-day qualifying period. The Division Engineer stated that all new employees are advised about injury reporting and the necessity to tell someone in authority, i.e., the Foreman, a Roadmaster or a Division Engineer promptly about any incident that causes physical discomfort. He said he told his Foreman about his sore back, but the Foreman denied being told when Claimant asked to be off on a Friday. His Foreman of 25 years never asked what caused the sore back, nor has anyone from the Division Engineer to the Foreman asked Claimant to file an injury report. In fact, as of the date of the investigation (July 27, 2006), there is no evidence an injury report has ever been filed.

Because Claimant was new and because no one in authority pressed Claimant about the particulars regarding the sore back, nor required him to file an injury report, it is readily apparent why the discipline was only a 30-day suspension.

AWARD

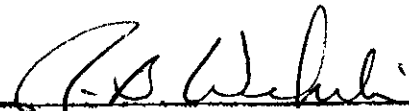
Claim denied.

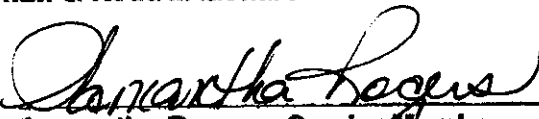
ORDER

This Board, after consideration of the dispute identified above, hereby orders that

an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Samantha Rogers, Carrier Member

Dated: August 15, 2006