

PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 301

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 when Claimant, E. M. Corchado, was assessed a 10-day record suspension on March 13, 2006 for a violation of Maintenance of Way Operating Rule 6.3.1-Main Track Authorization when he failed to properly complete joint authority form "MW Authority to Occupy Track" on the dates of January 18 and 19, 2006 as required by the Rule and FRA 2.1 Roadway Worker Protection; and
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing March 13, 2006.

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.

The Division Engineer went into the field and was checking various gangs working in his territory. Claimant's gang was one of those checked and he found that Claimant had failed to follow the Rule when seeking protection for his gang. He did not fill in the reverse side of the Working Limits Form which every Foreman in charge must

do. The Division Engineer looked both to the 18th and 19th of January and found that for both dates Claimant failed to complete the back side of the Working Limits Form.

An Investigation was convened to:

"...determine all facts and place responsibility, if any, in your alleged failures to properly document your working limits on January 18 and 19, 2006. You are in possible violation of Rule 6.3.1 Working Limits of the Maintenance of Way Operating Rules in effect Sunday, October 31, 2004 with revisions November 22, 2005."

The Carrier, following the investigation, assessed Claimant a 10-day record suspension (time he was not obligated to serve).

The Division Engineer in the discussion concerning the form was satisfied Claimant knew the Rule, but on the 18th and 19th for some reason Claimant did not complete the reverse side of the Working Limits Form. He did complete the Form as required on January 12, 2006, but not on January 18 & 19, 2006.

When Claimant testified (see pages 21 & 22 of the investigation transcript) as follows:

"JOHN J. PALACIOS: And there's, and on the 12th, you also had joint Track and Time with Mr. Willman, and the form on the back is properly filled out. Is there any reason why we didn't fill out the back of that form on the 18th or the 19th?"

EMILIO CORCHADO: It slipped my mind. I mean, I had, I had all the guys protected. I had my flags up, you know, my orange flags up and everything in our working limits. I had, you know, a briefing. I briefed with Mr. Fred Finch, and he was the Surfacing Gang Foreman doing all the tamping, you know, for the installs we were doing. Everything was, I asked my men, and they all told me that they all felt they were properly protected, but physically, you know, with flags and all. It was just due to the fact that I just didn't fill out on the back of a form.

JOHN J. PALACIOS: You knew Rule 6.3.1, right?

EMILIO CORCHADO: Yes.

JOHN J. PALACIOS: And you understand that rule?

EMILIO CORCHADO: Yes, I do.

JOHN J. PALACIOS: And then you understand this form of Maintenance of Way Authority to Occupy Main Track, or to Occupy Track and it's requirements?

EMILIO CORCHADO: Yes.

JOHN J. PALACIOS: And you understand that, the reason that the form is filled out on the back is not protection against trains, but protection against other Maintenance of Way. Do you understand that?

EMILIO CORCHADO: Yes."

there exists no doubts about Claimant's failing to abide fully by the Rules; Rules he understood but for some reason did not follow completely.

The burden of proof rests squarely on Carrier's shoulders in any investigation.

There is no better evidence of sufficient stature than Claimant's own admission.

Under the circumstances, the discipline is relative light and is not out of line.

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


David D. Tanner, For the Employees

Dated: November 9, 2007


Samantha Rogers, For the Carrier