

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 312**

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, A. V. Balderas, was disqualified as an operator of a G7CI Jackson 6700 tamper on April 3, 2006 because of inability to tamp and properly line a curve, and failure to perform assigned duties in accordance with the engineering instruction 14.3-Operators Responsibilities; 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 29, 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 Carrier on April 3, 2006, wrote Claimant advising him he was being disqualified as a Tamper Machine Operator because he was, "unable to tamp and properly line a curve and for non-compliance with the BNSF Operating Rules" regarding maintenance of the tamper.

Pursuant to the existing Rule, disqualification from any position doing certain

work such as here, permits the Claimant the right to request a hearing if he disputes the disqualification. Claimant through his Union requested the hearing.

From the record, the Carrier desired to take the opportunity to tamp a switch while a big project was taking place. This tamping could be done without having to secure time to work on the track as the project already in progress had clearance.

Claimant had a Machine Operator's classification and had spent hours operating a tamper, but he has had no formal training via the special school the Carrier runs for would-be tamper operators. Although he has a seniority date as an operator of August, 1996, as of the date of the hearing, he had lost three years due to an earlier incident where he rammed the rear of another machine.

The Roadmaster who admitted he knew nothing about the tamper work, started to quiz Claimant about the specifics of tamping a curve when Claimant indicated a need to walk the curve to understand where the tamping was to begin. The Roadmaster could not understand his need to do that as the tamper had a computer that would or could do that work. Furthermore, the machine was being checked over and it was discovered it was two hundred hours beyond the recommended period for an oil and filter change.

Claimant stated he knew the tamper had to have an oil change and he stated he had asked for filters but they had not been delivered. He was only at the work site with the tamper because the indication there was a need to do the tamping (which never did get done).

Claimant became unsettled by the questions about the lack of servicing the unit as required by the Rules and the apparent mistrust of his ability to tamp the curve. He did walk away from the Roadmaster, got in his truck and drove away. In other words, he

abandoned his assignment and the property, but fortunately for him he was never charged for this as the consequences could have been much more serious than a disqualification.

The disqualification was only to keep from operating a tamper; he still retains his Machine Operator rights.

A review of Claimant's personal record reveals three entries. Two entries are complimentary, one referring to outstanding efforts and the other is for his alertness in noticing a car being dragged on the ground.

The third entry is for an incident that caused Claimant to lose three years' work as a Machine Operator.

Since the charges only related to failure to tamp a curve and for neglecting the preventive maintenance required of the operator for the machine he was to operate, and because of a record with only one discipline being attached, it is this Board's opinion that Claimant is to be given the opportunity to attend the tamper school and upon successfully completing the course, the restriction upon his right to run a tamper should be lifted. If he fails the schooling or refuses to attend the tamper school, the bar to his being a tamper operator will remain in effect. There are no lost wages for Claimant.

AWARD

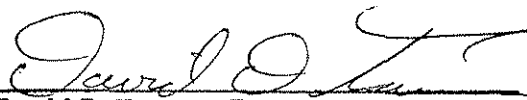
Claim sustained in accordance with the Findings.

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


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: June 30, 2008