

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 319**

**(Brotherhood of Maintenance of Way Employees**

**PARTIES TO DISPUTE:**

**(The Burlington Northern Santa Fe Railroad (Former  
(ATSF Railway Company)**

**STATEMENT OF CLAIM:**

- 1. The Carrier violated the Agreement when Claimant, D.L. Tenorio was given a Level 8 thirty day Record Suspension (19 actual days and 11 days record) when the Carrier found the Claimant in violation of Rules 1.6, 1.7, and 1.12 of the Maintenance of Way Operating Rules and Rule 1.2.9 of the Maintenance of Way Safety Rule 1.2.9. The Carrier provided a vague notice and no creditable evidence of any violation. The Claimant should be paid any loss of pay, travel time and mileage to the investigation, and the discipline should be removed from his record.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline record and make Claimant whole for all time lost.**

**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 March 5, 2007, the Carrier wrote Mr. D. L. Tenorio and Mr. F. Todachenny advising an investigation was being convened:**

**"....to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.6, 1.7, and 1.12 of the Maintenance of Way Operating Rules, effective October 31, 2004, and Rule 1.2.9 of the Maintenance of Way Safety Rules, in effect October 30, 2005, as**

supplemented or amended, concerning report received March 2, 2007, alleging your inappropriate and hostile conduct while assigned to Gang RP-17, and Mr. Tenorio's alleged possession of a weapon and threatening behavior of bodily harm towards Mr. Todecheeny."

The investigation was scheduled for March 12, 2006, and was timely held.

At the outset of the investigation, Claimant's Representative argued that the investigation should be halted and Claimant be paid for all time lost as Claimant did not receive five days' advanced notice of the investigation.

Claimant signed for the investigation notice on March 8, 2006, as stated the investigation was scheduled for March 12, 2006, and was held on March 12, 2006. It is clear that only 4 days exist between March 8 and March 12. The date of the notice does not toll the 5 days. The 5 days do not begin to run until March 9, and counting March 9 as the first day of five, Claimant only had a 4 day advance notice of the investigation which is in violation of 40(c).

Reviewing Rule 40 in its entirety, Section J reads:

"If an investigation is not held or decision rendered with the time limits herein specified, or as extended by agreed-to postponement, the charges against the employee shall be considered as having been dismissed."

Regardless of whether or not Claimant and his Representative came prepared, which is not a valid argument, the Carrier did not abide by Rule 40(c). All charges are hereby considered dismissed. Claimant is to be paid any lost wages and all traces of this incident are to be removed from his record. The mileage and travel time are not supported by any known Rule. That portion of the claim is denied.


#### **AWARD**

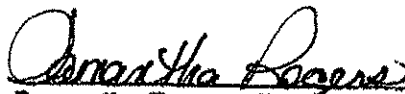
Claim sustained in accordance with the Findings.

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  
Dated: August 25, 2008

  
Samantha Rogers, For the Carrier