

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 321**

(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, W.L. Burns was given a Level S thirty day Record Suspension when the Carrier found the Claimant in violation of Rule 1.6 - Conduct for allegedly being confrontational and quarrelsome, when the Claimant only asked about his payroll. The Carrier presented no creditable evidence the Claimant was confrontational, nor quarrelsome. The Claimant should be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing November 1, 2007, continuing forward and/or otherwise made whole.**
- 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 November 2, 2007, the Carrier advised Claimant an investigation was being convened:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, for your alleged confrontational and quarrelsome conduct in an incident you were a participant in, on November 1, 2007, at

approximately 0700, at Rosenberg, Texas Depot, in violation of Maintenance-of-Way Operating Rule 1.6, Conduct, in your capacities as BNSF employees."

In addition, Claimant was also advised he was being withheld from service pending the outcome of the investigation.

In reviewing the transcript and the witnesses testimony, it is clear to this Board that Claimant's past history prompted the call to the crew's Supervisor to come out to the location and investigate this matter.

A Foreman and Claimant were involved. The Foreman submitted a written statement that reads as follows:

"Ongoing problem with Mr. Burns about rooming him with a roommate and his time on several occasions...."

The aforementioned is only half of the statement. Although the incident of November 1, 2007, was the sole reason for the investigation, some of Claimant's past was offered, but the Interrogating Officer was correct in keeping the subject matter restricted to the November 1, 2007, incident which was correct procedure.

The two individuals (the Foreman and Claimant) did get into an argument precipitated by the Foreman, not the Claimant. In fact, the Claimant did the right thing that after the exchange of words, went out of doors to get away from the discussion.

Claimant simply asked the Foreman for a copy of his payroll (and he had the right to receive a copy), but the Foreman for some reason (perhaps because of previous actions of Claimant) was very abrupt in refusing the request of Claimant. He could have handled his response in a different manner, but he chose to be confrontational.

The decision to impose discipline included a reference to his past history but it

should not have gotten that far.

The Carrier failed to present sufficient evidence to establish Claimant's culpability for the charges assessed. Claimant is to be paid as set forth in Items 1 and 2 of the Statement of Claim.

AWARD

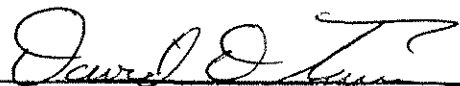
Claim sustained.

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.

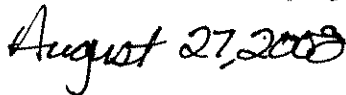


Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees

Dated:





Samantha Rogers, For the Carrier