PUBLIC LAW BOARD NO. 6850

Award No.
Case No. 330

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement commencing December 21, 2007 when Claimant, F.R. Valdez Jr. (1298199) was assessed a Level S 30-Day Record Suspension for allegedly violating Maintenance of Way Operating Rule 6.3.1 and Engineering Instructions Rule G.3.1 for the alleged failure of a backhoe machine occupying the main track at MP 173.2 without proper authority on November 13, 2007 on the Gallup Subdivision, and;

2. As a consequence of the violation referred to in part 1 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing December 21, 2007, and remove any mention of discipline from their records.

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 advised Claimant that an investigation was being convened:

"...to develop the facts and place responsibility, if any, in connection with possible violation of Rule 6.3.1 of the Maintenance of Way Operating Rules, in effect October 31, 2004, as supplemented or amended, and Rule G.3.1 of the BNSF Engineering Instructions, in effect August 1, 2006, as supplemented or amended concerning backhoe machine allegedly occupying main track at MP 173.2, without proper authority at approximately 11:15 AM MST, on November 13, 2007 while employed as a

foreman at Lupton, NM on the Gallup Subdivision. "

After a mutually agreed postponement, the investigation was held on December 4, 2007, following which Claimant was found responsible and was assessed a Level S 30-day record suspension and a probationary period of three years.

There exists no controversy concerning the charges leveled. Claimant and crew had two assignments. They completed one, moved to the location of the second but it was close to lunchtime. Claimant discussed the work and asked the crew if they wanted to eat first then complete the assignment or do the work and then eat. The election was to do the work and then eat after.

Claimant went to his truck to get authority from the Dispatcher to foul track with the backhoe. While on hold with the Dispatcher, he saw the backhoe bounce across Track 1 to foul Track 1. Claimant got off the radio and went back to his crew and began to work on Track 2.

In the investigation, the Backhoe Operator freely admitted he had no authority to foul Track 1. Two Supervisors were performing operations tests and witnessed the backhoe fouling Track 1 and they knew the crew had no authority to do so.

The operations team approached the Foreman and advised him to square away men and equipment, but he did not. Claimant's response was if they were taking him out of service, he had no authority. The Supervisors tied up Claimant and crew and called out a second crew to finish the work.

It is true that the Foreman cannot set on the shoulders of each of the members of his crew, but he has the obligation to take corrective action such as reminding the Backhoe Operator that he simply cannot take matters into his own hands. He must

abide by the Rules, and if the Operator objected, Claimant could have sent the Operator packing and called for a second Operator.

When Claimant did nothing to the Operator, and in fact commenced working on Track 2 as if the Operator's actions were sanctioned and nothing was wrong, the crew was placed in jeopardy. Claimant was clearly in the wrong.

The discipline assessed Claimant did not cause him to lose any time and is similar to a record mark which is intended to remind Claimant to abide by the Rules.

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

Samantha Rogers, For the Carrier

Dated: 11/14/08