

PUBLIC LAW BOARD NO. 5850

**Award No. 350
Case No. 350**

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 Claimants MW Artis and DR Vinson was given a Twenty (20) Day Record Suspension when the Carrier found the Claimants in violation for repair of a vertical split head rail defect on Track 1433 in Mykawa Yard. The Carrier failed to identify any Rule or Engineering Instructions violated, only providing a FRA report. The Claimants 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 Claimants discipline records and make Claimants 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.

The Carrier on July 2008, wrote a joint letter to both Claimants advising an investigation was being convened for:

"...the purpose of ascertaining the facts and determining your responsibility, if any, regarding your alleged failure to properly repair a vertical split head rail defect on Track 1433 at Mykawa Yard, Houston, Texas in accordance with BNSF Engineering Instructions on July 20, 2008, which resulted in an FRA Inspection Report on July 21, 2008."

The Carrier assessed each Claimant a 20-day record (deferred) suspension. No actual suspension, thus no lost time.

To this Board, the definition of a vertical split head is apparently a condition that experienced personnel can readily disagree as to what is or what is not a condition requiring certain actions. When advised of a broken rail, Claimant Vinson immediately took the track out of service.

The next day, Claimants Artis & Vinson went to repair the break. They determined that in their opinion placing angle bars on each side of the rail (after drilling and bolting) the track was safe for 10 MPH trains to pass over.

The following day, the Assistant Roadmaster and an FRA Inspector walking the track determined it was a split head and the rail had to be replaced immediately, and it was.

What confuses this Board is that the two experienced employees, one employed August 6, 1979 (Artis) and Vinson employed August 11, 1980, missed a quarter inch crack at the top of the rail. One quarter inch is much greater than a hairline crack. Artis has been a Track Supervisor since November 1, 2004, Vinson from June 7, 2007, and to think that neither one saw a one quarter inch crack at the top of the rail is difficult to understand.

This Board will sustain the claim to have the records of the two Claimants cleared of this charge, but by no means does the Board fault the FRA Inspector. This could very well be a case where train traffic may have caused the one quarter inch crack or that the old rail (which it was) suddenly cracked on its own. These are pure assumptions on the part of this Board who has difficulty accepting such an oversight of two experienced

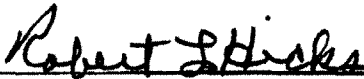
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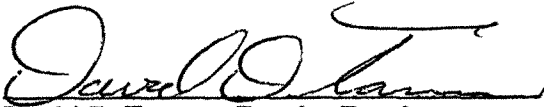
AWARD

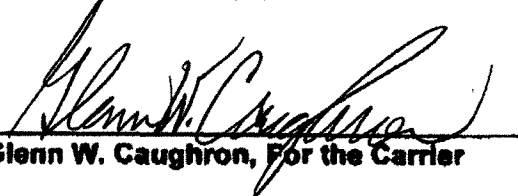
Claim sustained.

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


Glenn W. Caughron, For the Carrier

Dated:

7/16/09