

PUBLIC LAW BOARD NO. 6850

Award No. 351
Case No. 351

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 Edison Charley (6586762) was given a Level S 30-Day Record Suspension when the Carrier found the Claimant in violation of Maintenance of Way Operating Rules 1.6 and 1.15. The Claimant was not confrontational, followed instructions, and only left the property at the Roadmaster's instructions. The Claimant should be paid any loss of pay commencing forward and or otherwise made whole, 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 records 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 June 23, 2008, Carrier wrote Claimant advising an investigation was being convened:

"...to develop the facts and place responsibility, if any, in connection with your possible violation of Rules 1.6 and 1.15 of Maintenance of Way Operating Rules, effective October 31, 2004, as supplemented or amended, concerning your alleged being quarrelsome and discourteous toward Roadmaster Raymond Chavez, after being asked the day before to get

machinery switched out and allegedly not doing as directed and then leaving the property at approximately 11:00 AM on Tuesday, June 17, 2008, while working as a Foreman on gang TSCX0248 in Grants, New Mexico."

Claimant was assessed a 30-day record suspension (no lost time) and a 3-years probation period.

Claimant, a veteran of 28 years, has worked a large part of his time with a mobile gang. He and his Supervisor as of the date of the incident, had an exchange of words over some machinery that wasn't moved on the Monday before per the instructions he was given. The Supervisor had instructed Claimant to change the lineup of machinery placing the regulator first out. That was on a Monday. On Tuesday, the Supervisor found the regulator had not been repositioned. At this point, an argument ensued resulting in Claimant taking his gear and walking off the job.

Claimant contends he was fired, thus he was heading home. The Supervisor contends he did not tell Claimant he was fired, but he did tell Claimant, "You need to find another territory if you can't follow instructions from me."

When Claimant was told to come back to work, he insisted he was fired and he did not return.

Claimant contends when on Monday he was supposed to put the regulator first out, he didn't have time from the Dispatcher. He also had a hydraulic machine with a leaking cylinder that he had to fix which he did on Tuesday, the day the surfacing gang was to follow the first crew. There was a delay of about 20 minutes, but the work got done.

The temperature was above 85° on Tuesday, the day of this confrontation. The Roadmaster was overseeing two gangs and evidently planned to have the switch

installed and the surfacing gang follow. The pressure was on as track time is difficult to come by and both gangs were separated by twenty minutes.

With the heat of the day, two gangs to oversee and Claimant who was not able to get time to switch out the units required holding the operation up by twenty minutes, it is this Board's position that the record suspension of 20 days and the probation of some 3 years was over the limit.

Under the circumstances of this incident, the record suspension and the 3 year probation period is reduced to a formal reprimand.

AWARD

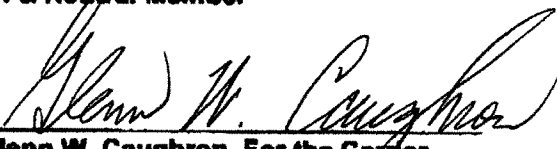
Claim sustained in accordance with the Findings.

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


Glenn W. Caughron, For the Carrier

Dated: 7/16/09