

PUBLIC LAW BOARD NO. 5850

**Award No. 353
Case No. 353**

(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 B. Garcia was given a Ten (10) Day Record Suspension when the Carrier found the Claimant in violation of Maintenance of Way Safety Rules 9-12.8. The Claimant was issued excessive discipline as a result of an accident in backing a truck. The Claimant did try to work in a safe manner while backing a vehicle. The Claimant should be paid any loss of pay commencing June 11, 2008 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.

Claimant was, as of date of the Incident, a Welder who is assigned a truck.

On June 10, 2008, Claimant was spotted by his Supervisor backing his truck without anyone guiding him from the back of the truck. Because Claimant backed the truck without a guide watching him backup, Claimant was cited for a Rules violation, found guilty and assessed a 10-day record suspension (no lost time).

The Rule which Claimant supposedly violated is Rule S-12.8.1 which states:

"When backing vehicles other than automobiles and pickup trucks, position someone near the back of the vehicle to guide movement, when available." (Underscoring added)

When no one is available, the driver must inspect the area he intends to back through looking for any obstacle that would impede his movement.

Claimant testified he scouted out the area he intended to back through and did not see anything that would impede his backing.

The key words are "when available", but the Carrier also covers a situation where no one is available.

To this Board, Claimant's actions were within the scope of the Safety Rules. He stated no one was available as everyone was working and his Assistant was with his Supervisor. Nothing was damaged; no one was hurt.

Under these circumstances, Claimant's backup was within the scope of the Safety Rules. The claim will be sustained.

AWARD

Claim sustained.

ORDER

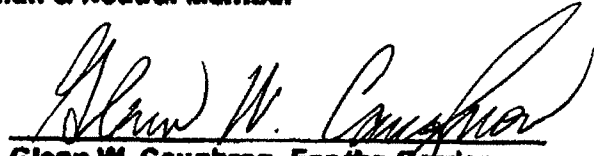
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees

Dated:

7/14/09


Glenn W. Caughron, For the Carrier