

PUBLIC LAW BOARD NO. 5850

**Award No. 355⁵
Case No. 355**

(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 M.R. Powell was given a Level S Thirty (30) Day Record Suspension with a twelve (12) month review period, when the Carrier found the Claimant in violation of Maintenance of Way Operating Rule 6.51. The Claimant was issued excessive discipline as a result of an accident while in charge of a rail detector test vehicle. The Claimant had many tasks on the date of the incident, which could have caused the vehicles to collide. The Claimant should be paid any loss of pay commencing July 22, 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.

On June 17, 2008, Carrier wrote Claimant and advised an investigation was being convened:

"...to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to use radio or hand signals to notify the operator of the following vehicle when slowing or stopping at MP 370.8

at Justin, Texas, on the Fort Worth Subdivision at approximately 1015 hours on July 22, 2008."

Following the investigation, the Carrier believing it had furnished sufficient evidence of Claimant's culpability for the charges, assessed Claimant a 30-day record suspension with a 12-month review period. Other than Claimant's attendance at the investigation, he was not suspended any part of the 30 days.

Claimant was the pilot; the employee in charge of a rail detector movement across Carrier's rails. His obligation was to secure track and time protection while traversing the property. The entire unit moved and stopped in accordance with his command.

Trailing the detector was a hybrid truck (both rail and road capabilities). The so-called chase vehicle was to stop and inspect any rail the detector recorded as being defective.

The Rule governing this type of operation states a trailing unit must keep at least 300 feet clearance between units; however, there are instances when they are to bunch up close, i.e., such as at crossings.

The rail detector stopped and the chase or second car rammed the detector. The operator of the second car confessed fully that he thought the pilot was securing orders from the Dispatcher, he dropped his pen on the floor and in reaching for it took his eyes off the detector car. While bending over to get his pen, the truck rammed the detector. As stated before, the operator of the second car fully confessed his negligence.

The investigation centers around Claimant's alleged negligence in not conveying via radio or on the ground hand signals when he stopped. The vehicles had bunched just prior to this incident. The detector car moved only 78 feet when it stopped again.

Claimant did not convey his intent to stop via the radio or hand signals. Claimant contends he had a red light on the rear of the detector as though that was sufficient to advise the truck driver to stop his movement.

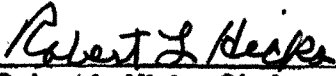
After reviewing the transcript and reading the Rules Carrier cited as having been violated, this Board is convinced that the Rules are intended to protect all concerned and even in instances such as this, if followed, this accident would not have occurred. The claim will be denied.

AWARD

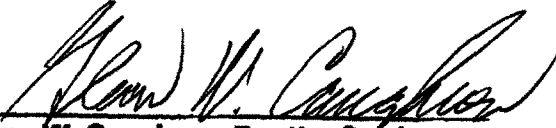
Claim denied.

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


Glenn W. Caughron, For the Carrier

Dated:

7/16/09