

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 360**

(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 T.R. Ruiz was issued a Level S Thirty (30) Day Record Suspension and a probation period of One (1) year for violation of Maintenance of Way Operating Rules 6.2.1 - Train Location; Rule 6.3.1 - Main Track Authority and 6.19 - Flag Protection. The Claimant was charged in failure to protect his gang and equipment, when train BNSF 6741-East had to be placed into emergency while a machine was occupying the track. The Carrier failed to provide a fair and impartial hearing. The Claimant should be paid any loss of pay commencing October 27, 2006 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 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 dispute is as set forth in Item 1 of the Statement of Claim. The discipline is also set forth in Item 1.

Claimant is a Foreman in charge of a rail gang. He knew he had the responsibility for the crew in regard to track warrants.

He secured trackage rights for the bulk of his crew, but he failed to secure rights

for the Speedswing Operator and an Assistant Foreman who intended to enter the track some 11 miles down the track from the main body.

The Speedswing Operator and the Assistant Foreman entered the track in front of an ongoing train. The Assistant Foreman and the Speedswing Operator were not protected.

When Claimant communicated with the Assistant Foreman, he failed to remind him he was not protected and would not be protected until he attached himself to Claimant's Form B.

Part of a Foreman's salary takes into consideration his or her responsibility for their crew. Granted, if any crewmembers acted contrary to the Rules or to the Foreman in charge, an investigation would be established with the Foreman testifying for the Carrier.

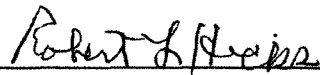
In this instance, Claimant as the headman on a crew has to secure track warrant protection for each member of his crew. This Claimant failed to do.

AWARD

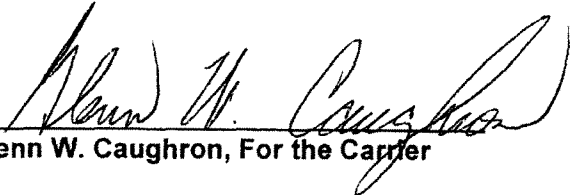
Claim denied.

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: 10/01/09