

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 364**

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 A. Vigil (1235720) was dismissed from service for violation of Rules 1.6 - Conduct, 1.7 - Altercations and HR-90.4 - Violence in the Workplace. Mr. Vigil was charged with striking another employee on the buttocks, while on duty and acting as the employee's supervisor on the gang on July 15, 2009. The Claimant should be paid for all wages lost and made whole commencing July 17, 2008 and continuing forward until returned to work. The discipline was excessive.**
- 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.

Item 1 of the Statement of Claim is a very brief synopsis that sets the tone of the Investigation. However, as stated in Award 261, Claimant was the principle in four Investigations held back to back on July 25, 2008. In Case 362, he was dismissed from the service of the Carrier. The entire issue in this case is now moot.

AWARD

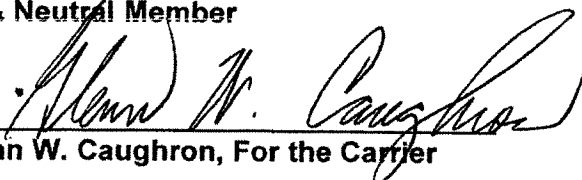
Claim denied.

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: 3/15/2010