

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 365**

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 K. J. Guillory (1182294) was issued a Level S 30-day Record Suspension and disqualified as a Track Supervisor for violation of Engineering Instructions and FRA audits on April 24, and May 8 through May 20, 2008. The Claimant should be paid for all wages lost and made whole commencing April 24, 2008 and continuing forward and/or otherwise made whole.
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.

Claimant in this case is the same Claimant in Case 366. He was disqualified in that case because of his negligence in inspecting assigned trackage. The Board supported the disqualification of Track Inspector K. J. Guillory.

The derailment on Track 3 caused the Division Engineer to order a track audit of the Marquette Yards so three Roadmasters did the audit. They found 88 deficits.

The FRA has certain requirements for Inspection and the BNSF has its own requirements that are more frequent inspections. For instance, the FRA wants a monthly

inspection of the Marquette Yards, whereas the Carrier requires a semi-monthly inspection.

Claimant had no viable reason for not reporting the deficits as required. His alibi that he is only one man, his Supervisor stated when he requested help in inspecting the track, someone was assigned to assist. This happened only twice in the six-month period.

Claimant explained that certain deficits cannot be entered in the so-called Mims report, but for some reason apparently the 88 deficits found by the auditing team did.

When both Investigations were reviewed (see Case 366), it is clear to this Board that Claimant is not doing his job. He is not inspecting the required trackage, and if he is, he has overlooked reporting any deficits.

Track Inspectors are obligated to inspect assigned trackage, even to walk track if it is loaded with cars. He carries the authority to take tracks out of service or to issue slow orders, whatever is most protective of Carrier's trackage.

The Carrier has furnished sufficient evidence of Claimant's culpability for the charges assessed. After reading the transcript, this Board's decision is to uphold carrier's position.

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.

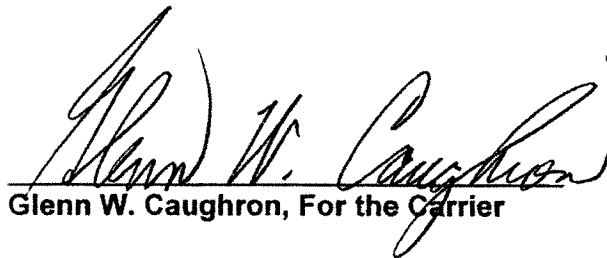

Robert L. Hicks, Chairman & Neutral Member

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David D. Tanner, For the Employees



Glenn W. Caughron, For the Carrier

Dated:

3/15/2010