

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 366**

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 10-day Record Suspension and disqualified as a Track Supervisor for violation of Engineering Instructions and FRA track inspections. Claimant was charged with failure to inspect Yard Track 102 in Lafayette for defective ties. 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 is a Track Inspector and as such his work to perform is personified by his job title. He has assigned territory to inspect which, in this instance, is one-tenth of a mile shy of 50 miles plus the Lafayette Yard (which has 22 tracks).

Because of a derailment on Track 103 in the yards, a team of five employees inspected the entire yard and on Track 102, which is the lead track, they found clusters of ties that should be replaced.

The Carrier immediately took the track out of service and assigned a crew to replace the defective ties which it did, but it cost the Carrier besides the regular pay, some 80 hours of overtime and even 33 plus hours of double time.

When the inspection team found the defective ties on Track 102, they advised the Roadmaster and Claimant was instructed to mark those ties that needed to be replaced. This he did.

The FRA requires the yards to be inspected once a month, but the Carrier changed the requirement to twice a month.

When Claimant's Supervisor received the report of the number of ties found defective on Track 102, he pulled the inspection reports for six months and found Claimant did not report any track problems on Track 102. Six months of track reports calls for 12 such reports and nothing was noted at any time during this six-month time frame.

The Investigation was convened for the purpose of:

"...ascertaining the facts and determining your responsibility, if any, regarding your alleged failure to properly detect defective tie condition on #102 track in Lafayette Yard your last 8 inspections, which resulted in the track being removed from service and the section forces working all night to restore service by installing approximately 50 ties which resulted in loss of switching production of 80 cars on June 2nd at 1630 hours, while you were assigned as Track Supervisor headquartered in Lafayette, Louisiana."

The Investigation was held on August 21, 2008. Carrier believed it had furnished sufficient evidence of Claimant's culpability for the charges assessed. Claimant was assessed a 10-day deferred suspension with a one-year probationary period and disqualified him as a Track Inspector.

After reviewing the transcript, this Board finds the Carrier did furnish sufficient

evidence of Claimant's culpabilities for the charges and with the discipline assessed.

Claimant never said, "I never inspected Track 102" but his alibi was that there was never a time during that six month period when the track was clear and he was near enough that he could take advantage of a clear track. He did know you could inspect a track's condition with cars standing upon the track, but Track 102 was 2 miles long and in order to do an adequate job, you had to inspect the track under the cars by walking both sides of the track.

This fact was established by a Carrier witness.

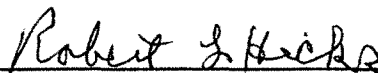
Obviously, by Claimant not properly inspecting this track he was not protecting the Carrier nor the Employees who work on or near the track nor was he doing his job.

AWARD

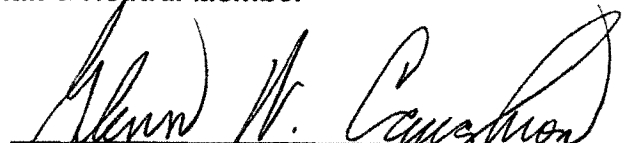
Claim denied.

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