

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 367**

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 J. T. Moore (6475560) was issued a Level S 30-day Record Suspension with a one year probationary period for violation of Maintenance of Way Operating Rules 1.2.5 - Reporting, 1.3.3 - Circulars-Instructions & Notices, Rules 1.1.3 - Accidents-Injuries & Defects, and General Notice 2 dated on January 1, 2008. The Claimant claimed an injury in September 2007 but did not report the injury to the BNSF until filing report dated October 3, 2008. Mr. Moore should be paid for all wages lost and made whole commencing October 1, 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, an employee since March 25, 1974, with an almost perfect discipline record, alleged he suffered an injury on/or about September 20, 2007, but did not report it until October 1, 2008.

It is apparent that Claimant's periods of limping and of leg and back aches commenced after the date he fill in a hold dug in process of affecting repairs to a bridge.

His injury report reflects that since the date he fell in the hole, he has been working with various aches and pains to his left leg, left hip, and sometimes to his right leg or hip or both.

There is no reward for toughing it out and having to alleviate the pain by various methods. The crew he worked with knew of his hurt and worked around him by assigning to him duties that would be the least strain.

When Claimant fell in the hole in September, 2007, he should have reported it within 72 hours to protect himself from what occurred. Late in September of 2008, after a vacation period where he tried various home remedies, he still hurt.

The Carrier has furnished sufficient evidence of Claimant's culpability for the charges assessed. The discipline of a 30-day record suspension (no lost time) and a one-year probation period is light.

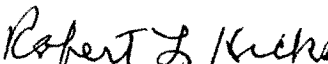
The claim will be denied.

AWARD

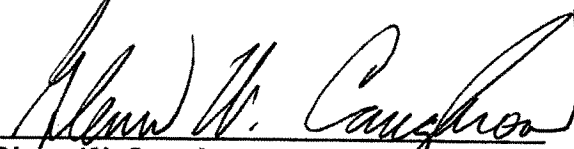
Claim denied.

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: 3/15/2010