

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 371**

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 M. D. Gillett (1620418) was issued a 10-day Record Suspension with a one year probationary period for violation of Maintenance of Way Safety Rules 1.2.3 - Alert and Attentive and Rule 1.1.1 - Maintaining a Safe Course on March 6, 2007. The Claimant allegedly sideswiped a light pole while driving the grapple truck. Mr. Gillett should be paid for all wages lost and made whole commencing March 6, 2007 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.

The incident is outlined in the Statement of Claim, as is the discipline. A review of the transcript shows the only fact that was substantiated was that in making a tight right turn, Claimant knocked over a utility pole. It was not broken. It just came out of the ground. There was no damage to the truck.

There was testimony that the pole was in the branches of a large cedar tree. Claimant did not see the pole. He figured he might clip some branches in making the

turn. He did clip some branches, but he also knocked over the pole.

Claimant was candid about the incident, fully admitting he did knock over the pole in attempting to make a tight right turn into a narrow road.

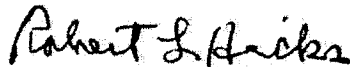
This Board finds for the Claimant. He was careful, he was not negligent. Claimant's discipline record is to be cleared and he is to be paid for all time lost, if any.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees



Samantha Rogers, For the Carrier

Dated: 11/8/10