

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 372**

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 C. E. D'Costa was issued a 10-day Record Suspension with a one year probationary period for violation of Maintenance of Way Operating Rule 1.13 - Reporting and Complying with Instructions on March 20, 2009. The Claimant allegedly left work prior to completing a job. Mr. D'Costa should be paid for all wages lost and made whole commencing March 20, 2009 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 D'Costa was the Foreman of a gang, and on the day of the incident they were finishing a tie replacement on a siding. In the morning talk with the Roadmaster, Claimant said he needed 25 ties to complete the assignment. The ties were delivered at about 0815.

Claimant sought permission for an early quit which was agreed to by his Supervisor but the Supervisor insisted the work was to be finished before the quit for the

day.

By noon on this Friday, the only one of the gang left on the property was the Claimant.

A Supervisor on Friday afternoon went to the worksite to inspect the work. He found seven to nine ties laying along the track beside the holes dug for the ties. The work obviously was not finished.

An Investigation was convened, and after the Investigation Claimant was assessed the discipline set out in the Statement of Claim; a 10-day record suspension and a one year probation.

Claimant at first asked for 25 ties in the morning conference. During the work day Claimant asked for seven more ties . After the investigation, Claimant stated that after ordering the replacements, he realized that the seven ties he had marked to exchange really were solid enough and did not need to be replaced. He did not communicate this to his Supervisor or cancel the additional replacement ties. He did dismiss his crew for the day.

The Board believes that the Claimant's assertion about the unneeded ties was a convenient explanation and that in reality his crew were merely rushing towards the noon hour so they could go home. If the replacement ties were truly not needed, Claimant should have communicated this to his Supervisor at the outset, before dismissing his crew.

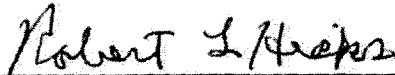
The Carrier did furnish sufficient evidence to support the charges filed and the Board supports the Findings of the Carrier in this instance.

AWARD

Claim denied.

ORDER

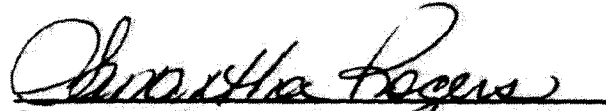
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees



Samantha Rogers, For the Carrier

Dated: 11/8/10