

PUBLIC LAW BOARD NO. 5850

Award No. 383

Case No. 383

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant S. M. Reves (6401559) was issued a Level S 30-day record suspension with three years probation by letter dated November 6, 2009 for violation of MOWOR 1.1 Safety, 1.6 Conduct, MOWSR S1.2.5 Safety Rule, Training Practices, Policies and MOWSR S1.3.1 PPE Requirements for failure to wear proper personal protective equipment while welding on October 6, 2009.
2. As a consequence of the violation referred to in part 1 the Carrier shall stricken the discipline from the Claimant's record and any reference there of, and that he be made whole for his lost wages and unnecessary expenses as a result of attending this investigation on October 22, 2009.

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 was charged with failure to wear his protective gear while grinding on a frog. Claimant testified that he finished the job then put away all his protective gear only to determine that there existed need to grind further. He was grinding without the necessary protective gear, i.e., face mask, leggings and respirator.

Claimant admitted he was in violation of the Rules enacted to eliminate as much as much injury as possible. The protective gear and Rules are for the safety of the individuals who do the work.

When Claimant admitted he did not follow the Rules, the Carrier's burden of furnishing sufficient evidence to support the charges was met. The Board will support the Carrier.

AWARD

Claim denied.

ORDER

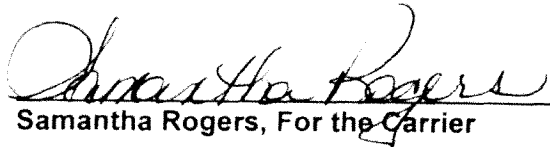
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees



Samantha Rogers, For the Carrier

Dated: 3/18/11