

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 54

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to suspend Coast Lines Welder E. R. Fitts, III from service for sixty (60) days and the employee's three (3) year probation was unjust.
2. That the Carrier now rescind their decision, expunge the discipline from the Claimant's record, remove the Claimant from his probationary period and pay him for all wage loss as a result of his suspension from service.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because Carrier did not submit substantial evidence that proved the Claimant violated the Rules enumerated in their decision. We contend that even if the Claimant was in violation as alleged, the punishment is extreme in proportion to the rules cited.

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.

At 12:35 PM, Amtrak reported running by two Red Boards at Santa Fe Springs yet it observed no equipment nor personnel in the area.

The Carrier later in the same day launched an internal investigation to determine what happened. Who left the Red Boards? Two welding crews were working in the area, one at the Santa Fe Springs and the second .8 miles east of the Santa Fe Springs crew.

Both crew leaders were queried. The Santa Fe Springs' crew stated they had picked up the Red Boards prior to releasing the track, and produced records supposedly supporting their pleadings.

Claimant readily admitted that Amtrak went by his Boards before he could pick them up. A further review of Claimant's actions developed he first released the track then went to retrieve the

Boards, but the Amtrak arrived on the scene while they were in the process of doing so.

Consequently, Claimant was served with a notice of an Investigation which was timely held, and subsequently he was assessed a sixty day suspension.

During the Investigation, it has been Carrier's consistent position that Claimant should have picked up the Red Boards then released the track, rather than release the track then pick up the Red Boards as Claimant had readily admitted doing. Claimant's representative challenged the Carrier witnesses to pinpoint the rule which provides the sequence the Red Boards are to be retrieved.

The first Carrier witness referred to Rule 10.3C, which reads as follows:

"...Employees and equipment must be clear of the limits before the employee granted track and time releases the authority."

The second Carrier witness knew it was a rule, but he could not reference the correct rule. It seems that the Carrier considers the Red Flag Boards as equipment, and when the rule provides that employees and equipment must be clear of the limits before releasing the track, and since Red Boards are considered equipment, they too must be retrieved before the track is released.

The Board is fully cognizant of the need for rules governing train movements and those rules providing employee protection for working on or near the track. Compliance with such rules is a must for the safety and welfare of the employees. Such rules must be stringently enforced as the safety and welfare of the employees themselves depend upon full compliance. The Carrier is obligated to place into motion correction procedures when it finds the rules have not been complied with, or correct any misunderstandings of the rule's intent that is not clear to all concerned.

In this instance, after the Carrier did explain its version of Rule 10.3C, it should be clear to at least those involved in this incident, but there exists evidence in the Investigation that others working on or near the track do not have the same version of Rule 10.3C as the Carrier has.

Note Claimant's testimony (uncorroborated for sure, but also unrebutted) that in a Monday morning job briefing with about twenty-five employees in attendance, that no one at the meeting was

able to pin point the procedure that required the retrieval of the Red Boards prior to the release of the track.

Under the circumstances existing in this record, this claim will be sustained. Before discipline can be sanctioned for a rule violation, it must be evident that the rule is clear and its application is understood by those for whom the rule was written.


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


C. F. Foose, Labor Member


Thomas M. Rohling, Carrier Member

Dated: October 23, 1997