

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 97

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on June 22, 1998, the Carrier assessed a Level S, 30-day suspension with 1-year probation to E.J. Morgan, for allegedly violation of Rules 5.4.7 and 5.4.8 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged failure to place a red flag at MP 769.3 at Forest Avenue on the DFW Subdivision, Texas Division on May 22, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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 place a red board protecting against west-bound movement within the boundaries of his Form B bulletin authority.

During the investigation, it was readily admitted by the Claimant that even though no men or equipment were fouling the track until shortly after 9:00 AM, the red board protecting against a west-bound movement was not placed until sometime between 9:40 AM and 9:55 AM.

The Foreman stated that the Dispatcher advised him that there was no west-bound traffic and from the east only a work train that Claimant was aware of and protected against. Claimant believed that there was no immediate need for the red board.

Claimant is in error. He should have placed the red board to fully protect the

employees and equipment who would be fouling the track. Accidents do happen and can happen when the unexpected occurs.

What is bothering this Board is the fact that the Roadmaster, the charging officer in this instance, was fully cognizant that there was no red board prior to 9:40 AM, yet he said nothing or did nothing to correct the error until about 1730 that day when he approached Claimant and said something about a prior incident and the necessity to put up a red flag.

It would appear to this Board that common sense would impel the Roadmaster to correct, immediately, the flag arrangement rather than say nothing until the individual is cited for a rules violation, or more specifically, until employees and/or machines become damaged.

It is noted from the Claimant's past record that since 1982 to present, Claimant has been disciplined three times. Besides the 1982 incident, there was an incident in 1987, and again in 1995. The censure mark recorded in 1988, for "failure to place a red flag" has been nullified by Case No. 87 of this Board, and none of the three prior involve protection rule violations.

In this case, the Roadmaster has to shoulder some responsibility for his failure to speak out when he discovered the missing red board. It is, therefore, the finding of this Board that Claimant's 30 day suspension be reduced to 15 days, and that he is to be paid for all time lost in excess of 15 days as provided for in the Agreement.

AWARD

Claim sustained in accordance with the Findings.

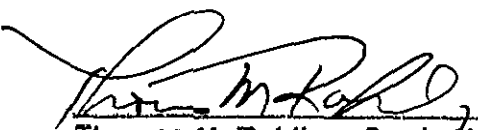
ORDER

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


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: March 26, 1999