

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 373**

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 K. A. McKeever (1298181) was issued a Level S 30-day Record Suspension with three years probation for violation of MOWOR 6.50.2 Approaching Road Crossings on July 8, 2009 concerning alleged failure to approach grade crossing prepared to stop and yield causing a track collision and damage to vehicle. The Claimant should be paid for all wages lost and made whole commencing July 10, 2009 and continuing forward an/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.

On July 8, 2009, Claimant at a highway crossing was hit by an automobile causing extensive damage to both vehicles.

Upon receipt of the news about the accident and after a look at both vehicles, the Carrier convened an Investigation with Claimant being the principle.

This Board read the transcript and in its opinion, the car hit the rail vehicle.

Claimant said he looked both ways twice as a car from the north direction caused

him to wait until it cleared. Claimant did not see the vehicle that hit his machine.

The Board finds Claimant took a positive movement on the crossing. This Board fails to understand how Claimant could do more than he did. The car struck him.

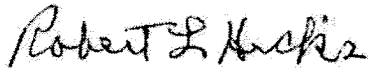
There is a lack of facts establishing that Claimant could do more to protect himself and the company vehicle he was driving.

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