

PUBLIC LAW BOARD NO 8850

**Award No.
Case No. 141**

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

STATEMENT OF CLAIM:

1. The Carrier violated the current Agreement when suspending Ms. V. L. Thomas from service for twenty (20) days for her alleged violation of Maintenance of Way Safety Rule S-21.31 for failing to wear the proper protective eye ware while grinding rail on October 11, 1999.
2. As a consequence of the Carrier's violation referred to above, the discipline shall be removed from the Claimant's personal record, and she shall be compensated for all wages lost in accordance with the Agreement.

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.

The notice of charges referred to two incidents that were to be the subject of the investigation, but at the outset of the investigation, the Carrier withdrew one charge concentrating only on Claimant's failure to wear the required protective gear while grinding rail.

It is readily admitted by Claimant that she was not wearing the required impact goggles under the face shield, but in lieu was wearing safety glasses. Claimant

argued that the goggles fog up causing obstructed sight, whereas the Roadmaster said that they have available anti-fog wipes and anti-fog glasses that could be used or that Claimant could simply stop the grinding process, remove the goggles to clear them up and then start in again. Claimant also relied on the so-called empowerment provision that reads:

"...Employees are empowered and required to discontinue any activity that involves the use of unsafe practices and tools...."

The Supervisor rejected that argument that it was not applicable to the situation Claimant was in.

The Board finds that empowerment Rule is not applicable in this case. Furthermore, when queried about the incident, Claimant stated that when she was instructed to wear the goggles, she stopped working and had to go to the truck and find them. To this Board, she started the day, or at least this phase of her day, by not wearing the goggles and from all appearances had no intention of doing so. If wearing the goggles causing fogging for Claimant (and testimony was that for some people fogging does occur), then Claimant should have spoken to her Supervisor about the problem.

As is evident by the gear Claimant had been furnished (welding hat with face shield, leggings, safety glasses, impact goggles, welding jacket, ear plugs), the Carrier makes every effort to provide for the safety of its employees and it insists, rightfully so, that the protective gear be worn.

When someone chooses not to utilize the safety gear available, the Carrier has to take corrective action. This is Claimant's third action resulting in discipline since she commenced service in October, 1996. The Board finds the discipline was appropriate.


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


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: August 25, 2000