

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 15

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 Eastern Region, Track Supervisor P. A. Vaughn, from service for thirty (30) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of an Investigation held 9:00 A.M., August 16, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision. In the transcript you will notice that the testimony of P. A. Vaughn is incomplete, with blank spots due to back ground noise and a bad tape. Therefore we perceive the suspension to be extreme and harsh under the circumstances even if the Claimant violated the rules enumerated in the decision.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 patrolling track and had track protection from 1030 hours to 1130 hours between Mile Posts 889.9 and 894.

Claimant, while patrolling, kept his ear to the radio conversations relative to train movements, and over heard a conversation from the train crew that was approaching the area he was patrolling. Because the conversation was other than track traffic related, Claimant, suspicious that the crew was approaching his protected area at a speed that would not allow them to stop short of any suspected or obvious track obstruction and to protect himself, moved to a road crossing and pulled into the clear.

The train crew, in clear violation of the Operating Rules, hi-balled it through the protected area. When Claimant asked the crew if they had the order of protection, they stated that they did, but they simply overlooked it.

The train passed Claimant at 1050 hour. The train crew tied up at 1150 hours, and Claimant reported the violation at 1350 hours. The train crew did not report the violation.

Claimant was cited for an investigation and following same, was assessed a 30 day actual suspension from service. The assessment was because Claimant did not "promptly" report the violation. In the minds of his Supervisor, this should have been reported instantly after the incident so that the Carrier could take action in checking out the well-being of the train crew, but since Claimant did not report the incident before the train crew tied up, that opportunity was lost.

Claimant's defense was that after the incident occurred, he was somewhat rattled, but he believed he had the obligation to patrol the track before the Amtrak train which was due shortly, and that he further believed the Carrier would have had more than ample time to deal with the train crew if he reported it at his first opportunity following the completion of his patrol. Claimant stated that at his first opportunity, after patrolling the track ahead of the Amtrak train, he did report the incident.

Claimant also stated he was unaware of the Rules governing Carrier's responsibility to react instantly following violations of this sort.

It is the opinion of this Board that Claimant now knows that such incidents must be reported instantly. The importance of adherence to the Operating Rules pertaining to safety of the employees, the equipment and Carrier's property cannot be over emphasized. The Carrier must instantly respond to any reported violations to find cause and to take whatever corrective action deemed necessary. But in this instance, it is the opinion of the Board that the discipline assessed was harsh and too extreme under the circumstances. If Claimant hadn't reported the incident, would anyone have been the wiser? Neither the Engineer nor the Conductor reported the violations, yet when Claimant does report, just three hours after the occurrence, he is disciplined for not reporting it sooner. Under these circumstances, and without any intent to minimize the importance of adherence to the Operating Rules, based solely upon the facts in this case, it is the opinion of this Board that a cautionary letter stressing the importance of reporting violations instantly would have been sufficient. The discipline of 30 days and the corresponding entry of facts are to be removed from Claimant's record. He is to be compensated for all time lost as provided in the Agreement.

AWARD

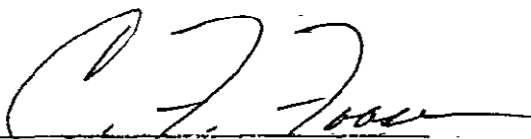
Claim sustained.

ORDER

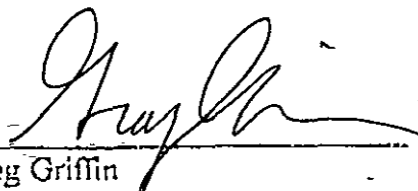
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Robert L. Hicks
Chairman and Neutral Member



C. F. Foose
Labor Member



Greg Griffin
Carrier Member

Dated 10/4/96