

PUBLIC LAW BOARD NO. 5850

**Award No. 167
Case No. 167**

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 July 28, 2000, Mr. E. J. Salazar was disqualified from Foreman and Assistant Foreman positions based on his alleged inability to properly supervise the employees under his jurisdiction, his alleged inability to plan the work of his crew, and his inability to recognize the priority of projects.
2. As a consequence of the Carrier's violation referred to above, the Claimants shall have his right to work as Foreman and Assistant Foreman restored, and he shall be compensated for all wage and other benefit loss.

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, as of the date of the investigation, had five years service as a Foreman. Furthermore, since his hire date of April 30, 1981, to the date of the investigation, he had a clean record. No disciplinary hearings whatsoever. In fact, there is not even one letter of warning or confirmation of a conference relative to offering constructive criticism regarding his actions as a Foreman. Claimant testified that for the five years until shortly before the disqualification, he worked Foreman and Assistant Foreman vacancies

wherever they occurred in the state of New Mexico.

It appears that the decision to disqualify was based on a collection of various unfounded, unsupported allegations that no one thought were serious enough at the time to take any corrective action. If he was derelict in handling the crossing work, a hearing should have been held. If it was believed he was negligent in getting the crew to the job site promptly, a hearing should have been held. If the instructions concerning the angle bars were clear and not complied with, charges should have been filed.

In all disciplinary cases (and this has to be considered as discipline when he is forced to work in a lesser compensated capacity) there is a burden to furnish substantial evidence to support the charges.

The disqualification letter reads:

"...It has been determined that you have not demonstrated the ability to handle the positions in a manner consistent with BNSF requirements...."

Before reviewing the file I wondered what the BNSF requirements for Foreman were. After reading the file thoroughly, I still had no inkling as to what were BNSF's requirements.

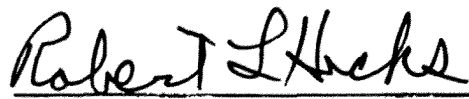
The charges were not substantiated.

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



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: July 10, 2001