

PUBLIC LAW BOARD NO. 5850

**Award No. 168
Case No. 168**

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 October 12, 2000, Mr. R. A. Davisson was issued a Level-S 30 day record and a two-year probation period for his alleged violation of Rules 1.1 (Safety); 1.1.1 (Maintaining a Safe Course); 1.1.2 (Alert and Attentive) and 1.5 (Conduct) of the Maintenance of Way Operating Rules in effect January 31, 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 he 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.

Claimant, called out at 2215 as part of a crew to repair some bad rail, tripped over a cement signal stand and fractured his right hip.

After investigating the incident, the Carrier believed Claimant violated all the Rules cited and did assess Claimant with a 30 day suspension.

During the investigation, the Carrier witness who did not personally see the accident, testified that Claimant was running, did not see the signal stand, and tripped

over same. The Carrier, both in the investigation, and when writing the FRA report said, "(Claimant) left the office and began to sprint East on the passenger platform...."

When queried by the Employees representative, the Carrier witness testified that the notation of Claimant running or more dramatically was sprinting, was culled solely from his interview with the Foreman who stated Claimant "ran into him."

Claimant denied he was running when he tripped over the stand, and the Foreman stated his use of the phrase "he ran into me" merely meant that Claimant collided with him; that Claimant was not running.

The Carrier as the charging party must furnish substantial evidence of Claimant's culpability for the charges assessed. They have not in this instance established that Claimant was running. In fact, the Carrier, after the accident, barricaded the signal stand, painted it a bright color and later removed the stand in its entirety. Further, there were no lights as of the date of the accident as there are now.

The claim will be sustained. Claimant is to be paid for all time lost as provided for in the Schedule Agreement and all traces of this investigation are to be removed from Claimant's files.

AWARD

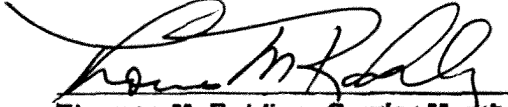
Claim sustained.

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: