

PUBLIC LAW BOARD NO. 5850

Award No. 184
Case No. 184

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 on December 27, 2000, Mr. J. D. Waits was issued a Level-S, 30-day record suspension with a one year probationary period for violation of Maintenance of Way Operating Rules 10.3 and 6.3.1 in connection with his allegedly fouling the track without protection on August 11, 2000 between Hoyt and Milano.
2. As a consequence of the Carrier's violation referred to above Mr. Waits shall have his record expunged of the above referenced discipline.

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 original notice dated August 31, 2000, reads as follows:

"Dear Mr. Waits:

Arrange to be present at a formal investigation to be held on September 22, 2000 at the Superintendent Office at 2100 Baker Blvd., at 10:00 a.m. The purpose of the investigation is to ascertain the facts and determine your responsibility, if any, with the violation of Maintenance of Way Operating Rule 10.3 and 6.3.1.

Arrange for representative and/or witnesses in accordance with governing

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[Signature]

provisions of prevailing schedule rules. Please acknowledge receipt by affixing your signature in the space provided on copy of the attached letter."

The above scheduled hearing was postponed, and the postponement letter read the same.

It was not until the letter of October 4, 2000, again postponing the investigation that the following was added to the investigation notice:

"...when you allegedly fouled the track without protection on August 11, 2000 between Hoyt and Milano...."

The investigation was finally held on December 1, 2000, after which Claimant was assessed a 30 day record suspension.

During the investigation, Claimant's Representative asked that the investigation be cancelled contending the October 4, 2000, postponement notice was the first time they were advised the date, the location and the event that prompted the investigation, and that notice was clearly outside the Agreement time limits.

In the on-property handling, Claimant's Representative cited the October 4 notice of postponement as the first time the charge letter contained a date, and then charged that the first notice dated August 31, 2000, setting an investigation date of September 22, 2000, was not filed promptly as defined by several Public Law Boards based upon the same parties here in dispute and the same Discipline Rule as in effect now.

The word prompt or "promptly" can have different meanings to different people, and since there have been Awards on the same point defining "promptly" as thirty days, this Board has no alternative than to abide thereby.

Contract language is determined by the parties who wrote the contract and Awards rendered defining the written language.

Whether the first letter setting the September 22, 2000, investigation based upon an incident not defined until the October 4, 2000, letter is considered as being untimely, or the October 4, 2000, letter was untimely, it is this Board's opinion that the notice of charges did not meet the "promptly" criteria.

Without considering the merits of the case, the claim is sustained. Claimant is to be paid for any time lost as provided for in the Schedule Agreement, and all traces of this investigation are to be removed from his file.

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: December 27, 2001