

PUBLIC LAW BOARD NO. 5850

**Award No. 202-
Case No. 202**

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 on February 21, 2001, when it removed the Claimant, Mr. S. M. Devenport, from service pending a hearing and after the hearing issuing him a 90-day suspension for allegedly violating Maintenance of Way Operating Rules 1.6 - Conduct, 1.22 - Not Permitted on Equipment, 1.25 - Credit or Property; and Maintenance of Way Safety Rules S-1.2.2 - Authorized and Trained, and S-16.1 Authorized Employees; for misuse of company credit and allowing an unauthorized person on Carrier property.
2. As a consequence of the violation referred to in part (1) the Carrier shall remove any mention of the incident from the Claimant's personal record, and make him whole for all wages lost per 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.

On February 26, 2001, the Carrier advised Claimant that an investigation was being scheduled to determine his responsibility if any for:

"...your allege permitting of an unauthorized person on BNSF property and

allowing him to operate BNSF equipment and the misuse of BNSF company credit card...."

Following the investigation, the Carrier on April 19, 2001, assessed Claimant an actual 60 day suspension.

From the transcript, the following facts emerged.

The "unauthorized person" referred to in the notice of investigation was Claimant's son who had held a regular machine operator's position with his Dad's surfacing gang.

Claimant's son had been hospitalized with back problems. When he was released, he furnished his dad with a copy of his medical release. Claimant then purchased for his son, with a company credit card, a flight from Texas to the work site. Claimant's surfacing gang works all over the system. A contract requirement is that those assigned to such gangs, working more than 400 miles from home, the Carrier will fly those assigned to an airport nearest their home and back to work again every other week.

Claimant's son's seniority was terminated pursuant to a Letter of Understanding between the parties that provides for termination for anyone off on unauthorized leave in excess of five consecutive work days. One caveat to the employee notified is his right to request an investigation if he disputes the termination and makes a timely request therefore.

Claimant's son did request an investigation, and when this incident came to light, he had not been notified that the termination of his seniority had been confirmed. The son's name remained on the seniority roster, and his name remained on the surfacing gang's payroll screen as manpower in Kansas City who tracks these things considered him terminated awaiting the results of an investigation, but left him on the roster and the

payroll screen awaiting final word of termination.

Claimant defended his actions by stating he was not aware of his son's status, i.e. terminated but awaiting confirmation.

Claimant also defended his action in furnishing his son transportation at the Carrier's expense by stating he had a release from the doctor who treated his son while he was confined to a hospital, which he argued was sufficient for him to get his son back working with the thought this matter of the medical release from Carrier's medical people could be handled by the Roadmaster after Claimant's son had resumed service.

Claimant was, as of the date of this incident, a twenty-one year veteran of the Carrier and had worked as a Foreman on the surfacing gang for the past two years.

His statement that he did not know of his son's status is difficult to accept as his son lived with him. However, Claimant goes home every other week and just may not have known, but manpower at Kansas City knew the son's status and although Claimant stated he had been in touch with manpower for filling vacancies on the surfacing gang, he never advised them that he was returning his son to service.

Furthermore, Claimant allowing his son to return to service after being hospitalized without clearance from the Carrier's medical services cannot be accepted as simply an "I didn't know" alibi. To reiterate, Claimant had 21 years of service with the last two years as the Foreman of the surfacing gang. He, himself, had been injured and had been restricted to light duty before being certified fit to return to full service, all of which was certified by the Carrier's medical services.

The charge of unauthorized use of a company credit card is based upon the action of Claimant purchasing transportation to enable his son to return to service. If his

son had been in good standing, had been released by the Carrier's medical services, Claimant's use of the company credit card to return his son to the work site would have been legitimate.

In summation, the Board finds the Carrier fully substantiated Claimant's culpability for the charges assessed. The charges, at first blush, appear ominous and career-threatening, but when the entire scenario is reviewed in detail, the bottom line is not as quite deadly as it appears.

The use of the credit card was not for the benefit of Claimant, nor has it been demonstrated the credit card misuse was for any other purpose than to return his son to the work site as quickly as possible.

Claimant's position is filled only by appointment. The Carrier could have readily suspended or even terminated him from the assignment, but that did not happen. The Carrier obviously has faith in Claimant's abilities in ramrodding the surfacing gang.

Under these circumstances, it is the Board's findings that the 60 day suspension be reduced to 30 days with Claimant being paid for all time lost as provided in the Agreement.

AWARD

Claim sustained in accordance with the Findings.

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: October 30, 2012