

PUBLIC LAW BOARD NO. 5850

**Award No. 205
Case No. 205**

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 September 4, 2001, when it issued Mr. G. P. Mitchell, a 30-day record book suspension for allegedly violating Maintenance of Way Operating Rules 1.2.5, for not being alert and attentive, which led to a personal injury.
2. As a consequence of the violation referred to above, the Carrier shall remove any mention of the incident from Mr. Mitchell's personal record, and make him whole for any 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 July 18, 2001, the Carrier wrote Claimant setting an investigation:

"...in connection with your alleged failure to be alert and attentive allegedly causing personal injury to yourself on Tuesday, July 10, 2001, at approximately 1300 hours, at Stronghurst, Illinois, and your alleged failure to properly report alleged personal injury, and your alleged failure to notify your supervisor before seeking medical attention, while assigned as Machine Operator."

After the investigation, the Carrier assessed Claimant's discipline as follows:

"...concerning your failure to be alert and attentive allegedly causing personal injury to yourself on Tuesday, July 10, 2001, at approximately 1300 hours, at Stronghurst, Illinois, and your failure to properly report alleged personal injury, and your failure to notify your supervisor before seeking medical attention, while assigned as Machine Operator, you are issued a Level 3 Record Suspension of thirty (30) days for violation of Maintenance of Way Operating Rule 1.2.5, Reporting."

The only portion of the aforementioned discipline letter this Board is in accord with is that portion reading:

"...your failure to notify your supervisor before seeking medical attention...."

There was absolutely no evidence offered to support the charge of his "failure to be alert and attentive causing personal injury", particularly when the discipline notice completes the aforementioned line by stating his injury occurred on July 10, 2001.

It was clearly established during the hearing that Claimant made an error in completing his injury report on July 13. He was not injured on the tenth. On that day, he went to a chiropractor and had papers to prove it. In fact, on July 10, Claimant did not work. In fact, he did not call in. He simply did not show up for work. The payroll records confirmed he was absent without authority on July 10, 2001, and his disciplinary record reflects he was assessed a formal reprimand for his failure to seek authority for the lay off.

Claimant's discipline is changed to a formal reprimand with only the notation that he sought medical attention prior to notifying his supervisor.

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
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli
Rick B. Wehrli, Labor Member

Thomas M. Rohling
Thomas M. Rohling, Carrier Member

Dated: September 30, 2002