

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 215**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue Claimants Paul B. Anaya, Lead Welder, and C. J. Geer, Welder, a Level S Thirty (30) Day Record Suspension and a Three (3) Year Probation Period was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wages lost as a result of an investigation held 10:00 a.m. December 20, 2002 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 October 28, 2002, Claimants were performing boutet welds. In the process of aligning the rail ends to accomplish the weld, Claimant Anaya was hammering a wedge.

A chip broke loose from the wedge when hammered and lodged in Claimant Geer's neck which had to be surgically removed.

After a reenactment of the incident, both Claimants received a letter dated November 13, 2002, to appear at an Investigation to determine their responsibility, if any:

"...concerning your alleged use of a defective welding wedge...."

Following the Investigation, the Carrier assessed both Claimants the discipline set forth in Item I of the Statement of Claim.

The Investigation clearly established that the wedge used had chips missing. It should have been turned in and a new replacement sought, but this did not happen.

This Board does not believe Claimant Geer, who was injured, committed any violation. He, in essence, was the helper to Claimant Anaya who has the title of Lead Welder. Claimant Anaya was in charge and he was responsible for the use of the defective wedge. Claimant Geer's record is to be cleared of all traces of this investigation, and he is to be compensated for any time lost as provided in the Schedule Agreement.

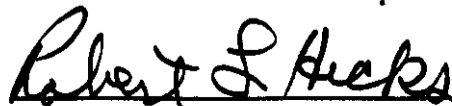
Most of the discipline assessed Claimant Anaya will stand; however, the three year probationary period will be reduced to one year.

AWARD

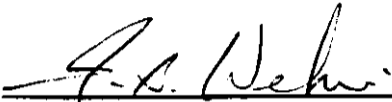
Claim sustained in accordance with the Findings.

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: March 13, 2003