

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 234**

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 allegedly violated the Agreement when Mr. Robert M. Moore was disqualified on January 26, 2003 from a Track Supervisor position and following investigation on March 27, 2003, the decision concerning his disqualification was upheld, he was given a formal reprimand with 1 year review period concerning his violation of Maintenance of Way Operating Rules 1.6 and 1.13 and Engineering Instruction No. 2.2.1, 2.4.4 and 2.4.5 and Track Safety Standards Part 213, 213.233 and 213.109.**
- 2. As a consequence of the Carrier's violation referred to above Mr. Moore shall be reinstated with seniority, vacation, all rights unimpaired and pay for all wages lost commencing January 21, 2003.**
- 3. That any mention of the charges relating to this incident shall be removed from Mr. Moore's personal record.**

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 was working as a Track Supervisor as of the claim date. Pursuant to the Agreement in effect as of the claim date, Claimant had worked as a Track Supervisor for

about five years in an "on again, off again" capacity which was proper under the Agreement.

The Agreement does provide that Carrier retained the right to disqualify a Track Supervisor in the manner done here as he had not worked continuously for one year as a Track Supervisor as he was only on the current job four months.

After receiving the disqualification letter, he did request a hearing that was held March 27, 2003 (the delay was because of medical leave of absence from January 20, 2003, to March 11, 2003).

Claimant was entirely and completely candid. He readily admitted he signed off on an FRA report listing the Amboy Storage Track as being in service when it was not.

As was his contract right, Claimant requested a Hearing, following which the Carrier wrote Claimant in part, as follows:

"...due to your honesty and admittance, you are hereby issued a Formal Reprimand...."

The Board then concludes that the disqualification was lifted and in lieu, the Formal Reprimand. The Board supports this modification.

The Board finds one minor disturbing matter in this incident. It developed that the Track Supervisor who co-signed the FRA report, who did certify the out of service track was OK, received no discipline. It is known in grievance matters that two individuals jointly involved in a single mishap, can receive different assessments of discipline, but not knowing the full circumstances, this Board only comments thereon. Claimant's record, on the other hand, contains three entries of discipline and one entry for quality performance.

If the Carrier's handling of Claimant's incident is to lift the disqualification and in

lieu issue a Formal Reprimand, this is fully supported by this Board. If it is anything other than a Formal Reprimand, then the Board only supports the Reprimand.

AWARD

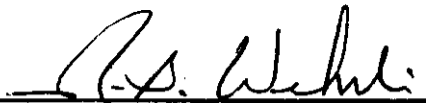
Claim sustained in accordance with the Findings.

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

William L. Yeck
as of August 21, 2003

Dated: Sept. 4, 2003