

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 250**

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 August 26, 2003, when it issued the Claimant, Mr. J. D. Jimenez, a 30-day record Book suspension, for allegedly failing to follow instruction in violation of Maintenance of Way Operating Rule, 1.6, and 1.13.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove any mention of this incident from the Claimant's personal record and make him whole for any wages lost account of this alleged violation.**

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 instructed to furnish either specific medical information regarding his injury - i.e., treatment, prognosis, etc., or furnish a signed specific BN medical release form.

At no point in the investigation had Claimant furnished any of the information requested according to Carrier's witness. No prognosis report, nor any letter setting forth a treatment regime, or in lieu of that a signed medical release form that would allow

this contract medical group the right to gather this information.

The Claimant's representative had with him a file estimated at one and one-half inches thick containing letters and reports that had already been requested and furnished.

The file also contained a medical release form dated in July of 2002, that would permit the Carrier to gather the information requested.

The Carrier witness stated the release form they requested was different than the one Claimant had in the file and which he had furnished the Carrier.

The Carrier has never denied the abundance of paper flowing between all three of the Carrier's medical groups, but simply insisted Claimant did not furnish the information requested.

In this Board's opinion, the Carrier has failed to furnish sufficient evidence to uphold the charges assessed. Claimant did furnish the signed release form from Claimant's file that had been furnished the Carrier, but no Carrier witness has been specific about what was requested and had not been furnished.

If the release form Claimant had signed and furnished did not meet the requirements of the medical group contracted to handle this matter, then why was that not pointed out to Claimant so he could sign the specific form Carrier required.

The claim will be sustained. All traces of this matter are to be removed from Claimant's record. If Claimant has lost any time solely relating to this investigation, he is to be paid as provided in the Schedule 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


William L. Yeck, Carrier Member

Dated: 7-9-04