

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 253**

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 July 3, 2003, when it removed the Claimant, Mr. S. B. Hlce from service, and issued him a 60-day actual suspension on August 8, 2003, for alleged insubordinate behavior and failing to follow his foreman's instructions; in violation of Maintenance of Way Operating Rules 1.6 and 1.15.**
- 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 operating a tamper machine in conjunction with several other machines.

Claimant started at 0600 at Needles, California, and moved to Ludlow, California, arriving at 0900 or 0930. Upon arrival at Ludlow, Claimant approached his Foreman and sought permission to make several phone calls. The Foreman agreed and told Claimant that when he was finished, come out to the machine as it required some normal

maintenance.

Claimant, according to the Foreman, after completing the calls, came out to his machine, secured his lunch and walked back to where he allegedly had made his calls.

The Foreman instructed Claimant to work on his machine, tightening some bolts. Claimant stated he had no tools and kept walking towards the building where the phones were located. He responded to the Foreman's instructions that he had no tools, having removed his tool box the day before the machine gang was scheduled to be abolished, either that Friday or the following Monday and the machines were to be left at Ludlow.

It was established that Machine Operators are required to carry a tool kit sufficient to perform minor repairs on the machine they are assigned to. Heavy repairs are done by the field mechanic.

It is obvious from the testimony that Claimant was set to do nothing after the machines were at Ludlow. Claimant tried to get through to manpower to find where he could bump, but he contends he spent some time attempting to get through.

Claimant may not have had his tools with him, but he could have borrowed some from the mechanic who was working on other equipment, but he did not. When asked about borrowing tools, he countered by stating no one offered him the tools.

What comes through in the investigation is Claimant's arrogance. He had no intention of doing any work after they reached Ludlow. In fact, when questioned by a Roadmaster the afternoon of July 2, Claimant allegedly told the Roadmaster that two members of the crew sat in the Ludlow office while he was working and that on July 2, he did the same thing to them. He sat. The Carrier on July 3, 2003, pulled Claimant from service pending the results of the investigation.

Claimant's Representative protested suspending Claimant prior to the hearing arguing that Claimant had already been disciplined without a hearing. The Board rejects that argument as in serious cases such as insubordination, suspensions prior to the investigation in such cases are not unusual. The Board finds such action did not deprive Claimant of any due process rights.

Claimant's work record is clean. In nineteen and one-half years of service, this is the first mark in his record, but clean records cannot protect someone from all charges or from being disciplined, but it can lessen the severity of the discipline. In this instance, Claimant was in violation. He was insubordinate and violated the requirement in force for all Machine Operators and that relates to the failure to have his tool box on the job with him.

Claimant's discipline is reduced to thirty days out of service. He is to be paid for wages lost as provided for in the Agreement for all time lost in excess of thirty days.

AWARD

Claim sustained as provided in 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