

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 256**

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 May 7, 2004, when it issued the Claimant, Mr. B. D. Moore, a 30-day record book suspension and 1-year probation, for failing to be wearing a hard hat when entering a truck cab, which led to an injury, in violation of Maintenance of Way Operating Rules 1.2.3, and 21.1.
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 all 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.

When Claimant was entering a crew box (an area behind a truck cab), he bumped his head on the top of the doorway. It has turned out to be more than a mere bump on top of his head. Claimant has suffered a loss of some two days. Obviously, he was not wearing his hardhat.

The Rule on the property is that all employees, contractors and their agents, and visitors must wear a hardhat with a minimum 6 point suspension.

There are some exceptions to the hardhat Rule, exempting train, yard and engine employees, nor is a hardhat required while in vehicles with overhead protection. In this situation, Claimant was climbing into the cab without his hardhat. Technically, he was in violation of the Rule. He should have worn his hardhat and then, when in the cab, he could remove his hardhat.

The discipline levied was that set forth in the Statement of Claim, a 30 day record suspension with a one year probation period.

Claimant has been with the Carrier since July, 1979. This is his first attendance (according to his record) at a disciplinary hearing, at least where he is the principle. His record has to be considered. The disciplinary process is intended to remind the charged employee the importance to follow the Rules, or to serve as an example to others, or to terminate the incorrigibles. Claimant cannot forget this bump on his head and his attendance at this investigation.

The discipline is reduced to a formal reprimand. If Claimant has lost any compensation other than to attend the investigation, he is to be paid as provided in the Agreement.

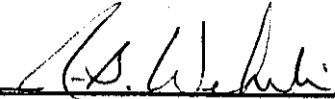
AWARD

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: Sept 2, 2002