

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 275**

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 April 5, 2005, when it issued the Claimant, Mr. A. J. Rodriguez, a 10-day record suspension for allegedly violating Maintenance of Way Safety Rule S-1.2 Rights and Responsibilities for failing to perform his work safely resulting in an injury to the Claimant.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove any mention of this incident from his personal record, and make him whole for any wages lost account of this incident.**

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.

While nipping ties, the nipping bar used by Claimant slipped causing him to fall and roll down a steep incline resulting in a sprained right ankle.

As is Carrier's customary practice, the incident was thoroughly investigated and it was the testimony of the Carrier's witness, a 25 year veteran Roadmaster, that Claimant should have used the track jack because the tie was sunk 3 to 4 inches in lieu of using the nipping bar.

Claimant hired out June 4, 1991, and has been working as an extra gang Foreman

since July 29, 2003. Claimant was of the opinion that the nipping bar was the proper tool to be used in this instance. He stated the track jack was in the truck at the bottom of the incline, and that if he used the jack he would have had to stand on the steep slope where his footing could have been more difficult. He readily believed the method he used was the safest. He stated he had stood in the manner prescribed i.e., legs spread slightly wider apart than his shoulders.

This situation was a judgment call. Claimant, who commenced working in 1991, believed his method was proper when after-the-fact testimony of a Supervisor with 25 years experience testified that Claimant should have used the track jack. If the injury had not occurred, who knows which method was the safest course of action.

This Board finds irreconcilable differences that renders the issue moot, but since Carrier is the moving party, the claim will be sustained.

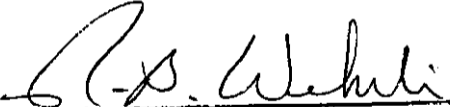
AWARD

Claim sustained.

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:

9/29/05