

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 277**

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 11, 2005, when it issued the Claimant, Mr. M. W. Artis, a 10-day record suspension for violation of Maintenance of Way Operating Rule 1.1.1, 1.1.2; and Engineering Instructions 2.4.5B Table 2-1 and 4.3.4, for failing to take the safe course, failure to be alert and attentive, failure to consider cross level during inspection, and failure to properly check restrictions at MP 5.5 on the Mykawa Sub-Division resulting in a derailment on February 3, 2005.
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.

Claimant works as a Track Supervisor and is responsible to inspect tracks assigned to him at least once every 30 days. A derailment occurred on February 13, 2005 (not February 3 as stated in Item 1 of the Statement of Claim), resulting in over \$200,000 of damages. An immediate inspection to determine the cause resulted in the finding that a cross-level variation of 3 1/4 inches existed and was the cause.

Since this territory was assigned to Claimant, they cited him for allegedly violating various Rules, and after the investigation they assessed a 10-day record suspension.

The following facts were established at the investigation that:

- 1 - The territory here concerned, particularly where the derailment occurred was considered as a soft spot.
- 2 - Claimant knew this and inspected this section on February 4 and again on February 10, and in each instance the cross-level was the same, $2 \frac{7}{16}$ inches.
- 3 - Heavy rains occurred subsequent to February 10, but prior to the derailment on February 13.
- 4 - The Carrier readily admitted that the heavy rain could have caused the cross-level to change from $2 \frac{7}{16}$ to $3 \frac{1}{4}$.
- 5 - Although the track was 10 MPH, heavy loads were in the trains that used this track.

No one questioned Claimant's Supervisor's findings of the cross-level measurement of $3 \frac{1}{4}$ inches and since a 3 inch cross-over calls for the Carrier to take the track out of service, it was the cause of the derailment.

To this Board, the circumstances of Claimant's negligence have not been established. No one has questioned his findings of the $2 \frac{7}{16}$ cross-level variance on February 10, thus they cannot say he was negligent when a heavy rain could have caused the variance to go from $2 \frac{7}{16}$ to $3 \frac{1}{4}$ inches.

AWARD

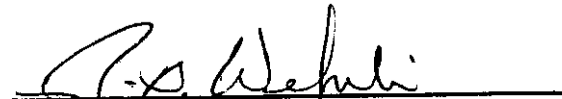
Claim sustained.

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