

PUBLIC LAW BOARD NO. 5850

Award No. 284
Case No. 284

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 14, 2005 when Claimant E. M. Mascote's employment record was closed for failure to respond to recall pursuant to Rule 9 of the 1982 BN/BMWE Agreement. Claimant was also issued a Level S 30-day Record Suspension for alleged violation of Maintenance of Way Operating Rules 1.13-Reporting and Complying with Instructions, and 1.15-Duty-Reporting or Absence.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights restored, remove any mention of this incident from his personal record, and make him whole for all time lost beginning May 5, 2005 forward.**

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.

On May 23, 2005, the Carrier advised Claimant of an Investigation to determine his responsibility for an alleged failure to respond to recall.

Claimant elected not to attend, thus the evidence Carrier presented was unrefuted. The Carrier assessed Claimant a 30-day record suspension and a 3-year probationary period.

On August 3, 2005, the Carrier wrote Claimant setting yet another investigation for his failure to respond to recall for service.

Such letters as set forth above are mandatory instructions to an employee advising of his recall to service, and should he not respond within the time period his seniority will be terminated.

Claimant did not respond thereby forfeiting all of his seniority and employment rights; thus, the challenge of a 30-day record suspension and the 3-year probation period is moot. Claimant is no longer an employee of the Carrier.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Samantha Rogers, Carrier Member

Dated: April 26, 2006