

PUBLIC LAW BOARD NO. 5850

Award No. 285
Case No. 285

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 August 19, 2005 when Claimant, D. W. Wilson, was disqualified as a welder for failure to perform assigned welding duties in accordance with the BNSF Track Welding Manual.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately reinstate the Claimant's welding 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 August 19, 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.

Claimant at the time of the investigation was a Welder for the Carrier and had been since July of 2003.

On June 23, 2005, the Carrier wrote Claimant advising him that an investigation was scheduled for the alleged procedural violations for work performed:

"...June 7 and 8, 2005, at East End Walnut, on the Stockton Subdivision of the California Division, in possible violation of Rules 1.4.4 (Quality and Quantity of Work); 11.5.3 (Frog Inspection Checklist); 11.11.15 (Final Check After Welding); 11.12.1 (H) (Finish Grinding General); 11.12.6 (D) (Grind and

Radius The Frog Point Tip); and 11.12.8 (Establish The Proper Radius On The Gauge Corner Of The Frog) of the Track Welding Manual Rev. 9-99."

Following the investigation, Claimant was disqualified as a Welder.

Claimant testified he knew the conditions he left the frog in on June 3, 2005 (not June 7 & 8, 2005), as he could not finish the work in one day. Claimant stated he left the frog in a condition that permitted normal train operations and this fact has been verified as no slow orders were issued.

Claimant stated he had the intention of returning the next day to finish the weld job, but he was assigned other work. He finally did return and finish the weld but the notice of the investigation was already issued.

In matters of discipline, the burden of proof rests upon the shoulders of the Carrier. The only proof established was that Claimant did work on June 3, 2005, leaving the frog in condition permitting normal train operations. When Claimant did finish the weld, other Supervisors were satisfied with the work.

In this Board's opinion, the disqualification as a Welder was an over-reaction. Surely others noted the unfinished weld after June 3 but before June 7, but said nothing to anyone leaving this Board to believe although the work was not completed, it was a satisfactory temporary solution.

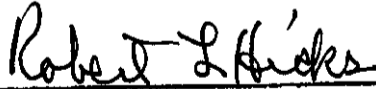
The claim is sustained. Claimant is to be paid the difference between what he could have earned had he not been disqualified and what he actually earned from the date of disqualification until his Welder status is reinstated.

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



Samantha Rogers, Carrier Member

Dated: April 26, 2006