

PUBLIC LAW BOARD NO. 5850

**Award No. 297
Case No. 297**

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 December 15, 2005 when Claimant, W. J. Aragon, was dismissed for alleged violation of Maintenance of Way Operating Rules 1.1-Safety and 6.3.1 - Main Track Authorization; and Engineering Instructions 1.1.3 and 1.1.4 for failure to properly protect men and equipment between MP 633.5 and MP 634.0 on the Hereford Sub-Division while assigned as Switch Maintenance Gang Foreman; and**
- 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 unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing December 15, 2005.**

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 November 9, 2005, the Carrier wrote Claimant as follows:

"Attend investigation in the BNSF Railway, Conference Room, 320 S. Polk Street, Maxor Building Suite 500, Amarillo, Texas, on Thursday, November 17, 2005, at 10:00 a.m., for the purpose of ascertaining the facts and determining your responsibility if any, in connection with your possible violation of Rules 1.1, 1.15 and 6.3.1 of the Maintenance of Way Operating Rules, in effect, October 31, 2004, as supplemented or amended and Rules 1.1.3 and 1.1.4 of the BNSF Engineering Instructions, as last revised,

concerning your alleged failure to protect men and equipment working under your Form B protection on Main Track 2, between MP 633.5 and MP 634.0 on the Hereford Subdivision of the Kansas Division, when you allegedly left the work site and instructed Trackman, Jeffrey Hardy, to call trains through your Form B 4891 from MP 633.5 to MP 634.0, without notifying welders who were working under your track occupancy authority on Main 2, while assigned as Foreman on Switch Maintenance Gang, on Thursday, November 3, 2005."

Following the investigation, Claimant was advised his services for the Carrier were terminated.

On Thursday, November 3, 2005, Claimant secured Form B protection between MP 633.5 and MP 634.0 for his crew. Some welders also intended to work in the area Claimant's crew was working, and they secured protection through Claimant's Form B.

With Form B protection, the train must stop before it enters Form B territory and secure permission to go through from the Supervisor in charge. In this instance it was Claimant.

About 12:00 noon, Claimant went to a convenience store for lunch and delegated the train release responsibility to a Rule's qualified Assistant. The Assistant asked Claimant if any others were on the multiple group Form B protection and Claimant simply said no, just let the trains through.

About 12:30 PM, the welders noted a train coming through on the track they were working and scrambled to clear off the track. The employee to whom Claimant had delegated the authority to permit the trains going through did not know the welders were also relying on the Form B protection.

Claimant testified that it was his understanding that the welders did not need any protection from 12:00 noon to 12:30 PM, and the Welder Forman said no, he only advised

he had no need for the loan of the hydraulics from Claimant's crew to the welders. He was not taking the welders off the multiple Form B protections.

It is obvious of the damage to men and equipment if the welders were without track protection.

The Carrier developed sufficient evidence to establish Claimant's culpability for the charges and did terminate the services of Claimant.

It would appear there is a simple transaction, passing Form B protection from one to another, but Form B's are one of the main forms of protection. When there is a briefing and a Form B is involved, everyone at the briefing has to be on the same page, if not they results would be catastrophic.

Regarding the discipline, Claimant in 12 years has had (including this one) four disciplines imposed and he has one letter of accommodation for giving up his Christmas holidays in 2004, when he worked the 24th and the 25th cleaning up a derailment.

Although the results could have been catastrophic, this was a case of misunderstanding in communicating. It was not negligence or willful. Under the circumstances, Claimant is to be returned to service as a Welder only. He is to be disqualified as a Foreman.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not 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
Robert L. Hicks, Chairman & Neutral Member

David D. Tanner
David D. Tanner, Labor Member

Samantha Rogers
Samantha Rogers, Carrier Member

Dated: 6/21/2007