

PUBLIC LAW BOARD NO. 5850

**Award No. 300
Case No. 300**

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement on February 9, 2006 when Claimant, G. A. Arceneaux, was withheld from service and later dismissed on March 22, 2006 for alleged violation of Maintenance of Way Operating Rule 1.6 - Conduct and Engineering Instruction 21.2 - Showing Proper Conduct when claimant allegedly had inappropriate contact with a maid on February 9, 2006; 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 February 9, 2006.**

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 was a Welder Foreman in charge of a mobile gang that travels constantly.

On February 10, 2006, the Carrier advised Claimant an investigation was being convened to ascertain his responsibility, if any, regarding alleged misconduct at a motel in Clifton where Carrier crews were staying. The incident was the alleged inappropriate

touching of a maid employed thereat. The local police were called and issued Claimant two citations. Claimant was also asked to leave the motel.

There is no evidence of charges being filed, let alone an indictment, nor was there anything more revealing as to the nature of the two citations that were issued.

The investigation was postponed by mutual agreement, finally being held on March 9, 2006. The reason for the postponements was to find out if any indictments were levied or warrants issued. There were none. In fact, Claimant stated there would be no indictment and the charges, whatever they were, were likely to be dropped.

The only thing in front of this Board is the maid's version of what occurred and Claimant's denial that anything happened. There was no evidence offered by anyone else at the motel concerning Claimant's behavior that would in anyway point to aberrant behavior.

What is evident is the fact that the motel felt justified in calling for the police and barring Claimant therefrom.

Claimant was charged with violating Rules 1.6 and 21.2. The charges will be upheld, but for a less serious charge than improper touching.

A review of Claimant's work record has six entries, five for disciplinary reasons and one entry for qualified performance for working December 24 and 25 to assist in cleaning up a derailment rather than spending the holidays with his family.

Clearly the issue at the motel was embarrassing to the Carrier. The dismissal clearly would have been upheld but were it not for the letter of qualified performance.

Under the circumstances, the dismissal will be reduced to a long suspension. Claimant is to be returned to service with all of his seniority rights but without any pay for

time lost.


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) 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


David D. Tanner, Labor Member


Samantha Rogers, Carrier Member

Dated: