

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 308**

**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 when Claimant, S. P. Fisher, was assessed a 10-day record suspension on February 20, 2006 for a violation of Maintenance of Way Operating Rules 1.13-Reporting & Complying with Instructions and 1.15-Duty-Reporting or Absence when Claimant failed to report for duty on January 12, 2006 and failed to comply with instructions on January 13 and 14, 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 20, 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 occupied the position of Track Supervisor. These are seven-day jobs requiring someone to cover or inspect a certain number of tracks within a ten-day period.

If the employee has a good reason to be off he must notify his Supervisor

preferably by phone or face to face, but a message left on an answering machine about being absent does not protect the individual. He must talk with the Supervisor.

Claimant was off January 11, called in after the 1800 hour on the 12<sup>th</sup>, advising he needed to be off on the 13<sup>th</sup> and 14<sup>th</sup>. When an assignment starts at 0700 and Claimant calls in during the 1800 hour on the same day, he obviously is not protecting his job. Furthermore, he left his request on the answering machine rather than with his Supervisor directly.

Recorded messages do not protect the employee; he has to talk with the Supervisor. Claimant's Supervisor laid out the layoff procedure when talking to the gang in early January, thus Claimant should have been forewarned of the layoff requirements. The Carrier convened an investigation for Claimant:

"...to determine all facts and place responsibility if any, in your alleged failure to report your absence on Thursday, January 12, 2006 and failure to comply with instructions on Friday, January 13, 2006 and Saturday, January 14, 2006. You are in possible violation of Rule 1.13 Reporting and Complying with Instructions and Rule 1.15 Duty-Reporting or Absence of the Maintenance of Way Operating Rules in effect Sunday, October 31, 2004 with revisions up to November 22, 2005."

Shortly after the completion of the investigation, Claimant was advised that the Carrier was assessing Claimant a 10-day record suspension that does not require lost time. The discipline is extremely light when looking at Claimant's record (6 disciplinary entries since 1996, plus one letter of accommodation in 1997).

The Board leaves standing the findings of guilt and the light discipline assessed.

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

  
David D. Tanner, For the Employees

  
Samantha Rogers, For the Carrier

Dated: March 10, 2008