

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 324**

(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 when Claimant Eddy Jones (1162247) was given a Ten (10)-Day Record Suspension for alleged violation of Maintenance of Way Safety Rules S-17.25-Power Line Clearance, and BNSF Engineering Instructions 14.10.2-Cranes and Boom Trucks. The Claimant was not rules qualified and had not been trained to avoid overhead guide wires with the boom. The Claimant should be reinstated with seniority vacation, all rights unimpaired and pay for all wage loss commencing September 10, 2007, continuing forward and/or otherwise made whole.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline record and make Claimant whole for all time lost.

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 August 2, 2007, the Carrier wrote Claimant advising an investigation was being convened:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, regarding your alleged failure to operate Grove Crane BNX 1600073 safely and maintain a mandatory, minimum clearance of a

power line, while assigned as Machine Operator with Gang RP-19 on July 31, 2007, on the Galveston Subdivision at Knowd Junction, Mile Post 215.1, at approximately 1310 hours, when the machine you were operating struck and tore down an over-head power line."

The Investigation was held August 7, 2007, after a mutually-agreed postponement.

On September 10, 2007, the Carrier, believing it had furnished sufficient evidence of Claimant's culpability for the discipline assessed, advised Claimant he was assessed a ten-day record suspension.

The Organization appealed Carrier's position and filed the claim that is now before this Board.

After reviewing the transcript of the Investigation, there is no doubt that Claimant did not know about the power line. He stated the crane did tear down some power lines. Of this the Board is fully convinced, but he was without eyes watching him from the ground. Neither he nor any one of the 37 men in the crew were aware the power lines existed in the territory they were to work.

The Foreman and the Roadmaster were to scout the area before the work began just to preclude what has transpired. The Foreman fully admitted he forgot about the wires, so the job briefing before the start was incomplete. If the briefing would have included the power lines, everyone in the crew would have been aware of their presence. The Assistant Foreman who was on the ground in front of the crane could have assisted Claimant in remaining clear of the wires.

Of the others who had a responsibility for what occurred, they walked away free from any discipline as far as this Board knows. Claimant should not be solely responsible for what happened. Had others been penalized, this Board would have

upheld the discipline. Claimant should not be the only one holding the bag for this incident.

This was a group failing, not just one lonely crane operator.


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


David D. Tanner, For the Employees
Dated: August 27, 2008


Samantha Rogers, For the Carrier