PUBLIC LAW BOARD NO. 6850

Award No.
Case No. 327

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on July 19, 2006 when Claimant, JD Malone (6452700) was dismissed for violation of Maintenance of Way Operating Rules 1.1.1; 1.6 and 6.50 when the Claimant failed to yield right of way to vehicle traffic at public road crossing located at MP 718.93 on Slaton Sub-Division. Claimant later reinstated on leniency basis on December 26, 2006, and;

2. As a consequence of the violation referred to in part 1 the Carrier shall pay all wage loss commencing October 5, 2006, continued to his return and remove any mention of discipline from his record.

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 September 11, 2006, the Carrier wrote Claimant advising an investigation was being convened:

> "...to develop the facts and place responsibility, if any, in connection with your possible violation of Rule(s) 1.1.2, 1.6 and 6.50.2, of the Maintenance of Way Operating Rules, in effect October 31, 2004, as supplemented or amended, concerning your alleged failure to yield the right of way to vehicle traffic at a public crossing at MP 718.93 on the Slaton Subdivision causing an accident resulting in damage to BNSF vehicle 18188 as well as

injury to driver and damage to privately owned vehicle in excess of $10,000 at 1315 hours, on September 7, 2006, on the Kansas Division, while assigned as Track Supervisor headquartered at Lubbock, TX."

On October 5, 2006, Carrier wrote Claimant advising that as a result of the September 22, 2006, Investigation, his services with the Carrier were terminated.

During the on-property handling, Claimant was reinstated on a leniency basis on December 26, 2006. To regain his seniority, he signed the following letter:

"This letter is to advise you that you are being reinstated to service effective December 26, 2006, on the Kansas Division.

It is understood that your reinstatement is on a leniency basis with seniority and vacation rights unimpaired and without pay for time lost or any further appeal. Upon your reinstatement you will be allowed to displace per Rule 13 - (h) part 3, which states in part:

> Restricted to a lower class in which he holds seniority by being permitted to displace the junior employee in such lower class.

Your personal record at the time of reinstatement will stand with a Level S and three (3) year review period. If you commit another serious rule violation during the tenure of this review period, you will be subject to dismissal.

This letter will be placed on your personal file. Your signing below serves as receipt and agreement of this reinstatement as stated above."

A review of the transcript clearly shows Claimant was negligent at the crossing resulting in a $30,000 loss of equipment he was driving. Although he has a light record, he also is a veteran of about 28 years and had been a Track Supervisor for about 11 years prior to this incident.

He was negligent in not ensuring the traffic was clear when he ran into a pickup truck. Fortunately, no one was hurt. The time out of service was over 90 days, but in view of the seriousness of the accident, the time out of service will stand.

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: 10/16/08