

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 335**

(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 commencing February 28, 2008 when Claimant, Steve M. Reves (6491559) was issued a Level S Record Suspension of 10-days for allegedly proceeding to work in an unsafe manner after being operations tested and briefed by two company officers while working as a Welder B on Wednesday February 20, 2008 on the La Junta Sub-division at approximately 1320 hours near mile post 215.6 violating Maintenance of Way Safety Rules S-1.2.5, and;
2. The Carrier violated the Agreement commencing November 28, 2007 when Claimant, Steve M. Reves (6491559) was issued a Level S Record Suspension of 30-days and placed on probation for a period of one year beginning April 29, 2008 for allegedly failing to comply with instructions from Kent Davis, Welding Supervisor, at the Hutchinson Depot at approximately 0800 hours on November 28, 2007 violating Maintenance of Way Operating Rule 1.6 - Conduct, Sections 1 - Insubordinate and 6 - Quarrelsome, and;
3. As a consequence of the violation referred to in part 1 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing February 12, 2008, and remove any mention of discipline from his record, and;
4. As a consequence of the violation referred to in part 2 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing November 28, 2007, and remove any mention of discipline from their records.

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.

As is evident by the Statement of Claim, the parties have combined two disciplinary incidents concerning the same employee and held the investigations back to back.

Both cases involved the actions of or the inactions of Claimant Reeves. In the first case, Claimant was assessed a record suspension of 10-days, and in the second case the charges were insubordination.

The Board desires to propose one Award involving both incidents but finds it cannot.

The first discussion involves the case as outlined in Item 1 of the Statement of Claim. In this case, there exists no controversy. Claimant was candid, calm and readily admitted to the violations. A 10-day record suspension is extremely light, but a review of Claimant's disciplinary record shows one letter of appreciation, then this incident. That is all there is to his record as of the first case. Consideration has to be given to the letter of commendation just as other incidents of discipline. Such letters cannot be used to offset serious cases, but in minor cases such as here concerned it does have an impact. The 10-day record suspension is to be removed from his record in its entirety. This is so because of 27 years seniority without any other disciplinary action plus the letter of appreciation, and the manner he conducted himself was candid and cooperative moves this Board to sustain the claim.

The second case outlined in Item 2 of the Statement of Claim is a bit different.

Claimant's facial hair exceeded the maximum allowed when it becomes necessary to wear a respirator.

Claimant's insubordination charge comes from being ordered to shave his beard. He, for his own reasons, did not. In fact, he was even sent home for not reducing the facial hair to a minimum before this incident that would not invalidate the protection afforded by the respirator.

It developed that once a year Claimant and others doing the welding work were required to take a face mask test. At these sessions, Claimant admitted he came cleanly shaved, but apparently in this instance he did not think it necessary.

There was also a defense of Claimant keeping a razor in his truck should he be called off his regular scheduled work where a respirator was not required to do work where respirators were required, but this was not acceptable to the Carrier.

The Carrier did instruct Claimant to appear either clean shaven or have his facial hair at a minimum; a small goatee and upper lip hair.

Claimant was emotional about the instructions and did put up an argument, but it was an argument he lost.

To do welding on the Carrier in certain incidents, employees must be prepared to don a respirator and the respirator must function properly. Claimant was in the wrong. He must now realize he is not immune to the use of protective gear the Carrier supplies.

Again, the 30-day record suspension and a one year probationary is reduced to a 10-day record suspension with no probationary period.

AWARD

The claim outlined in Item 1 of the Statement of Claim is sustained. The claim

outlined in Item 2 is reduced 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.



Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: 12/5/08