

PUBLIC LAW BOARD NO. 5850

Award No. 354
Case No. 354

(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 J. Woody was given a Level 8 Thirty (30) Day Record Suspension when the Carrier found the Claimant in violation of Maintenance of Way Safety Rule S-1.2.3. The Claimant was issued excessive discipline as a result of an accident operating a ballast regulator. The Claimant had little training with the machine and limited visibility, thus striking the battery box. The Claimant should be paid any loss of pay commencing August 28, 2008 forward and or otherwise made whole, and the discipline should be removed from his record.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline records 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.

Claimant hired out July 5, 2007, and commenced working as a Trackman. On September 24, 2007, he became a member of a mobile gang and as of the date of this incident was still with the gang.

Apparently, he has machine savvy as while working as a Trackman with the gang,

whenever there was a need for someone to operate the ballast regulator in the absence of a qualified Machine Operator, his Supervisor called Claimant to fill in in order to complete whatever assignment they had. Claimant never refused. He stepped up and performed as his Supervisor expected.

In fact, Claimant trained a Machine Operator who bid on the job who had no experience.

On the date of this incident, the regular Machine Operator messed up somehow and they took that Operator to the nearest facility to be tested.

While that was occurring, the Foreman asked Claimant to step up and run the regulator.

When he was filling in, one arm of the regulator moved a battery box of about 3' x 3' made of cement, disconnecting one of the wires. If there was any other damage, it was not brought out.

When the battery box incident happened, Carrier established this investigation and then assessed Claimant a 30-day record suspension.

If there was no one with Claimant's mechanical ability when the regular Operator was away, no one would have driven the regulator. This surely would have caused some down time.

During the investigation, Claimant had been forth right in his testimony and explained fully how this ACCIDENT occurred.

It is this Board's opinion that accidents do happen. In this instance, Claimant with nothing but a Trackman's standing did what he could to keep the gang's productivity time from going away.

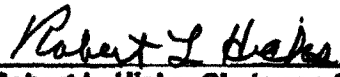
The claim is sustained.

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


Glenn W. Caughron, For the Carrier

Dated:

7/16/09