

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 359**

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 Claimants R.W. Marquez and R.S. Lunow were issued a Ten (10) Day Record Suspension and review period of One (1) Year for violation of Maintenance of Way Operating Rules 1.6 and 1.7. The Claimants were charged with a verbal altercation on February 27, 2007, but had been coached and counseled prior to the investigation. The Carrier with the counseling and issuing discipline is performing double jeopardy. The Claimants should be paid any loss of pay commencing March 14, 2007 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 Claimants discipline records and make Claimants 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.

The dispute is as set forth in Item 1 of the Statement of Claim. Item 1 also sets forth the discipline assessed each Claimant.

Claimant Marquez fully admitted he violated the Rules when he used inappropriate language on a conference call.

When he burst forth with the language, he was immediately addressed by his Supervisor to watch what he was saying. With Claimant's confession, there is no further need to discuss Claimant Marquez's participation.

Regarding Claimant Lunow, it is not so obvious that he indulged in inappropriate language. He did deny using any such language, but when he and Marquez started in, in the Roadmaster's office, the Roadmaster stated both resorted to inappropriate language.

To this Board, an altercation has to have at least two people involved. When Claimant Lunow went into the Roadmaster's office to object to something being said, the altercation began, according to Claimant Marquez.

The Board understands that fatigue can cause someone to go off, but it is at this time each must be ever so careful of the language used.

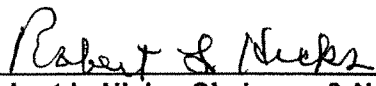
In this incident, neither Claimant has been assessed a serious amount of discipline as no time was lost other than the day of the investigation.

AWARD

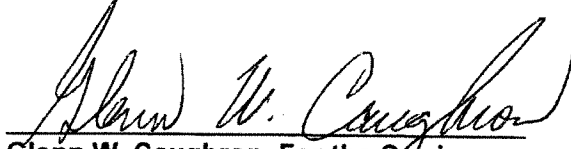
Claim denied.

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


Glenn W. Caughron, For the Carrier

Dated: 10/01/09