

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 368**

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 Claimant Preston Yazzie (6544019) was issued a Level S 30-day Record Suspension with a one year probationary period for violation of Maintenance of Way Operating Rules 1.6 - Conduct, 1.9 - Respect of Railroad Company and Engineering Instructions 21.2 - Lodging Procedure--Showing Proper Conduct. The Claimant was arrested at Carrier lodging facility for involvement in a domestic altercation on July 28, 2008 in Seligman, Arizona. Mr. Yazzie should be paid for all wages lost and made whole commencing July 28, 2008 and 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 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.

On Monday, July 28, 2008, a domestic dispute erupted. After police were called, they did take one of the combatants to jail.

The one who went to jail was an employee of this Carrier and the lodging he was staying at was one of the facilities under contract with the Carrier to provide lodging for a BNSF employee staying there while working nearby.

The Carrier wrote Claimant on August 20, 2008, advising an Investigation was being established for the purpose of gathering facts regarding:

"...possible violation of Rule 1.6 and 1.9 of the Maintenance of Way Operating Rules, in effect October 31, 2004, as supplemented or amended, and rules 21.1 and 21.2 of the Engineering instructions, in effect November 1, 2004 as supplemented or amended concerning your alleged involvement in a domestic altercation while staying at company provided lodging at the Stagecoach 68 Motel in Seligman, AZ on July 28, 2008 at approximately 1:43 pm and your alleged falsification of payroll records on July 28, 2008 while employed as Foreman at Seligman, AZ on the Seligman Subdivision."

There is no need to review the facts any further than to say Claimant's wife found Claimant in the room with another woman and all hell broke loose.

Only one employee at a time can stay in a room. The fighting between husband and wife took place in the hall of the hotel

There exists sufficient evidence of Claimant's culpability for the charges assessed. No lost time was assessed. The discipline is rather light, but Claimant has been employed since 1980 and has a fairly clear record.


AWARD

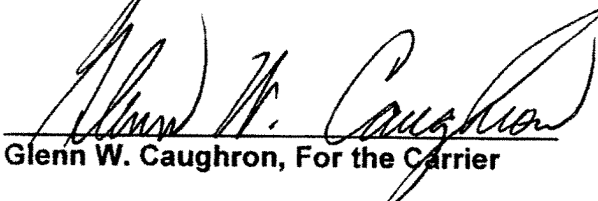
Claim denied.

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
Dated: 3/15/2010


Glenn W. Caughron, For the Carrier