

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 370**

(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 R. B. Rubendall (6454573) was issued a Level S 30-day Record Suspension for violation of MWOR 1.2.5, Reporting, MWOR 1.2.7, Furnishing Information and MWOR 1.6, Conduct on May 10 and 11, 2007 concerning misrepresented facts and providing conflicting information to a Supervisor. The Claimant should be paid for all wages lost and made whole commencing April 24, 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 May 23, 2007, the Carrier wrote a letter to Claimant advising of an Investigation being convened for:

"...the purpose of ascertaining the facts and determining your responsibility, if any, regarding your alleged misrepresentation of facts while providing conflicting information to Mr. Mooney on May 10 and 11, 2007 regarding your reporting of a personal injury."

The Investigation was held June 14, 2007, and the Carrier did assess Claimant the

discipline set forth in the Statement of Claim.

Claimant sought permission from his Supervisor to be off two days to undergo chiropractor treatments. The Supervisor gave him permission to be off the two days.

Claimant was concerned about losing two days' pay. He even offered to pay for the two days if the Supervisor would not mark him absent.

That approach was somewhat surprising and the first time this Board has heard of such an offer. In lieu, the Supervisor said he could mark off one day of his floating vacation days and one day as a personal leave day thus no lost pay.

Claimant refused to use the one day of his vacation and the personal leave day. He then came forth with laying blame for an injury that occurred when he was loading scrap material.

Claimant finally filled out a report which was within the 72 hour window of reporting skeletal muscle problems; thus begins the incident that has led to the discipline Carrier assessed.

The record of the incident is fully revealed in the Investigation that Claimant was not injured and did finally accept two days' pay by allowing the Carrier to pay him for one day vacation and one personal leave day.

This Board so finds that the Carrier furnished sufficient evidence of Claimant's actions in this case. He lost no time when assessed a 30-day record suspension.

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: 11/2/10