

PUBLIC LAW BOARD NO. 5850

Award No. 385

Case No. 385

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 K. J. Jimenez (6581227) was issued a 20-day record suspension by letter dated March 11, 2010 for violation of MOWOR 1.1.2 Alert and Attentive for causing damage to a machine on November 19, 2009.
2. As a consequence of the violation referred to in part 1 the Carrier shall stricken the discipline from the Claimant's record and any reference there of, and that he be made whole for his lost wages and unnecessary expenses as a result of attending this investigation on February 11, 2010.

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 is a Machine Operator who was operating the regulator. While securing the wing of the regulator, it broke the window of the cab and bent the frame.

Claimant was advised an Investigation was being convened:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged damage to the regulator window when the left wing was incorrectly locked in place allowing the wing tip to strike the window frame on November 19, 2009 while working near the Pico Rivera Yard on the Los Angeles Subdivision."

There is no question as to what occurred, but the Investigation was intended to find whether the Claimant was responsible.

The incident occurred at night. Claimant stated he apparently failed to raise the template that would protect the window.

However, there was considerable discussion concerning the lack of a light, or whether enough light was on the left side. There is also testimony concerning a design flaw as this was not the first time a regulator window was broken. Fortunately, the windows in the regulator are tempered in that they crack but do not shatter when something like this occurs.

At the Investigation, the employee who handles the replacement of the glass on similar machines testified he has replaced other regulator windows, but none where it was necessary to also replace the frame which, in this incident, was bent out of shape.

It also was developed that night operations were not new to the Claimant as he had operated the regulator at night previously.

Claimant was assessed a 20-day record suspension and a one-year probationary period. No lost time.

This Board finds that, regardless of the theorized design flaw and lack of light on the left side of the regulator, Claimant's experience in night operations and admission that he must not have raised the template far enough to protect the window, that the Claimant was in violation of Rule 1.1.2.

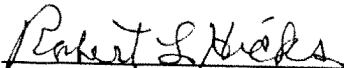
The claim will be denied.

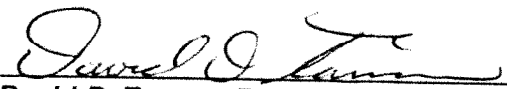
AWARD

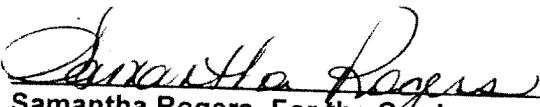
Claim denied.

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: 2/18/11