

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 57

PARTIES TO DISPUTE.
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess fifteen (15) demerits to Western Region, C. A. Cuevas' Personal Record was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an Investigation held 9:00 a.m. October 6, 1997 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, demerits assessed onto his Personal Record is extreme and harsh under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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.

Following an incident wherein Claimant suffered a minor injury, another employee and Claimant were charged with various rule violations, the principle Rule being No. 6, which reads.

"...Employees must not enter into altercations, play practical jokes, or indulge in horseplay while on duty or on company property...."

The other employee, following the Investigation, accepted his responsibility and a 30 day suspension. Claimant was assessed 15 demerits.

A review of the transcript reveals that the employees have been playing "practical jokes" on each other with at least the Foreman being fully cognizant of what has been going on. To now

punish an employee for an act condoned by Management (Foreman) goes against the grain of good relations.

Everyone should be put on notice such acts are to cease immediately, and if the warning is violated the offender does so at his or her peril.

Furthermore, what occurred in this instance could not be classified as a "practical joke." The employee who accepted the 30 day suspension was clearly the aggressor. Any reaction by Claimant was merely in self-defense.

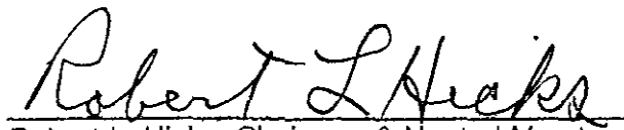
Under these circumstances, this Board will sustain the claim.

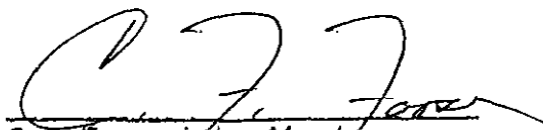
AWARD

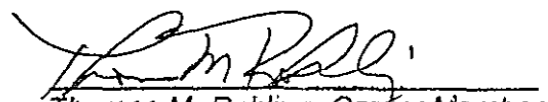
Claim sustained.

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


C. F. Foose, Labor Member


Thomas M. Rohling, Carrier Member

Dated: December 22, 1997