

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 6

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

STATEMENT OF CLAIM:

Carrier's decision to dismiss Central Region Maintenance of Way employee L. U. Gallegos, effective December 7, 1995 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from December 7, 1995. (01-08-AC/170-13113-9517)

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 December 1, 1995, Claimant was served notice of an Investigation to be held December 7, 1995 to determine his culpability for the following:

"your alleged late report of injury, alleged to have occurred on November 6, 1995, when you reportedly fell while in the bed of your assigned hi-rail vehicle;

your alleged failure to maintain the housekeeping in the bed of your assigned vehicle in a safe condition, which allegedly resulted in very unsafe footing conditions;

your alleged failure to follow roadmaster's instructions on October 25, 1995, to have prompt repairs made to the frog in the East Wye switch at Coronado Junction;

your alleged failure to take proper action on same frog when on October 26, 1995, the welder (who was at the location to make welding repairs) pointed out to you that the long point rail in the frog was too worn to be repaired by welding and warned you that it should be changed out, to which you allegedly replied "I don't have the parts

to repair it and took no action: (emergency repairs had to be made to this frog on November 5, 1995, due to major failure of the long point rail, resulting in a serious service interruption.)

your alleged failure to observe broken guard rail bolts (FRA violations) at Coronado Junction and Pinta, Arizona, and to take the proper action to protect the conditions. These conditions were observed and corrected by the Roadmaster when he inspected track immediately behind your inspection of these limits on November 6, 1995:

your alleged failure to detect and take necessary action at an improperly installed derail at the west end of the north siding at Pinta, Arizona, during an inspection you were directed to make by the Roadmaster to ascertain that the siding was in safe operating condition: (a tie gang had worked through the limits of the siding) on November 1, 1995. The derail was not the proper size for the weight of rail, was improperly installed and was left in an unsafe condition behind the tie change out process. This resulted in serious service interruption when the improperly installed derail punctured the fuel tank of a locomotive when a train entered the siding:

your alleged failure to follow roadmaster's instructions in March, 1995, to promptly have a worn switch point and stock rail changed out at East Coronado Junction:

your alleged failure to follow Roadmaster's instructions in August, 1995, to promptly have a second fatigued switch point and stock rail changed out at Coronado Junction: (some two weeks later, when his instructions had not been followed, he had to personally arrange for these repairs.)

your alleged falsification of required Monthly Turnout Inspection Reports completed by you for the period between and including March and August, 1995, as these reports fail to note the above two switch and stock rail exceptions: (in fact, no exceptions are reported during this period of time for any switch on your assigned territory, and Monthly Turnout Inspection Reports for the months after August, 1995, have not been completed by you, as required: all of which was discovered on November 14, 1995)

your alleged falsification of daily FRA Inspection Reports recording required hi-rail inspection of your territory, indicating inspections were made by you when inspections were not actually performed: (all of which was discovered on November 14, 1995)

your alleged failure to perform required inspection of your territory at the required frequency during the months of August, September, October, and November.

1995, as found in review of track and time and track warrant records; (all of which was discovered on November 14, 1995)."

The notice of the Investigation was hand delivered to Claimant's residence and given to Claimant's wife, who said she would give it to Claimant. There was further testimony that Claimant was present in the house but refused to meet with the Roadmaster who delivered the notice.

Claimant, therefore, had knowledge of the Investigation and did elect, at his peril, to not attend.

Under these circumstances, each and every charge of the Carrier remained unchallenged. The culpability of Claimant has been established. If Claimant could not attend because of his injury, that matter could have been communicated, and a postponement of the Investigation arranged for. Claimant, after being advised of the Investigation, obviously made no effort to communicate with either his Organization or the Carrier.

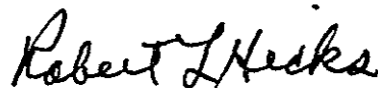
The discipline will not be disturbed.

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 and Neutral Member



C. F. Foose
Labor Member



Greg Griffin
Carrier Member

Dated 9/19/96