PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated July 12, 2011, M. A. Wilson, Roadmaster, notified C. P.[ok] Willingham ("the Claimant") to attend a formal Investigation on July 28, 2011, at the Carrier's Atlanta Division conference room in Atlanta, Georgia, "to determine the facts and place your responsibility, if any, in connection with incidents that occurred on July 4, 2011 in conjunction with your track inspections on the Birmingham Mineral Subdivision. Based on information developed on July 6, 2011," the letter continued, "it is alleged that you violated CSX operating rule 704-b by inspecting switches without proper track authority and additionally falsified FRA reports and CSX track authority documents. It is also alleged that you were dishonest with supervisors investigating the incident."

In connection with the incident, the letter proceeded, the Claimant was "charged with failure to properly perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules – General Rule A; General Regulations GR-2; On-Track Worker Rules and Qualifications - Rule 704-B and FRA 213.9." The letter also informed the Claimant that he was "being withheld from service pending investigation."

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, C. P. Willingham, at the times here relevant, was employed by the Carrier as a Track Inspector. His date of hire was August 10, 2008. In July, 2011, his immediate supervisor was Roadmaster M. A. Wilson, MW Atlanta Division, for whom he had been performing track inspecting duties for approximately 15 months. Mr. Willingham's work schedule was Sunday through Thursday, 9:00 a.m. to 5:30 p.m.

Saturday, July 2, 2011, was a rest day for the Claimant, but he worked that day to fill in for a coworker who wanted to take the day off for personal reasons. Monday, July 4, 2011, was a contractual holiday, but Roadmaster Wilson asked the Claimant to come in to work that day to perform a heat inspection. The Claimant testified that the Roadmaster told him to do a heat run and that he could then go home for the rest of the day. The Roadmaster testified that he told the Claimant that if his FRA frequency inspections were caught up, he would only be required to make a heat run.

On July 5, 2011, Roadmaster Wilson checked his tickets and log to see if there was any activity in his territory the previous day when he was not on duty. He saw that at 15:18 hours on July 4, 2011, the operations center in Jacksonville, Florida, had opened up a ticket at 15:18 hours for a flash flood inspection because of heavy rains. Such an inspection requires the inspector to patrol the track and inspect it for washout conditions, flooding, and debris that could interfere with the safe passage of trains.

The ticket showed that the portion of the track to be inspected was on the Atlanta

Birmngham Mineral subdivision from milepost OLB 388.3 to milepost OLB 396.0. According to the ticket, Mr. Willingham was called at 15:31 hours on July 4, 2011. Assistant Roadmaster Joe Finch informed Roadmaster Wilson on July 5 that Mr. Willingham did not accept the assignment and that a Track Inspector from an adjacent territory had to be called, who performed the assignment on overtime. Mr. Finch told Roadmaster Wilson that when called by the operations center, Mr. Willingham said that he had been drinking and could not accept the assignment.

Roadmaster Wilson testified that at 15:31 hours he would have expected Mr. Willingham to still be out conducting the heat inspection that was assigned to him to perform that day. Heat inspections, he explained, are conducted during the heat of the day, which is defined on the division as between 12:00 and 18:00 hours. He would have expected Mr. Willingham to report for duty at 12:00 o'clock, Roadmaster Wilson stated, for a heat inspection.

When Roadmaster Wilson learned that Mr. Willingham did not conduct the flash flood inspection, he decided to check the ITIS computer database to see what work he submitted as having been performed by him on July 4th. It showed that on July 4th Mr. Willingham input into the computer system a Daily Track Inspection Report showing an inspection date of July 4, 2011, and tracks inspected and traversed from OOL 394.66 to OOL 403.91 plus five switches inspected respectively at OOL 402.50, 402.80, and 403.60 and OLC 421.00 and 421.30.

Roadmaster Wilson also checked the EC-1E Form dated July 4, 2011, showing the Rule 704 authority granted Mr. Willingham for that date. It was for track extending from OLC 405.1 to OLK 430.0. The EC-1E Form did not include any authority to inspect track from OOL 394.66 to OOL 403.91 that Mr. Willingham's Track Inspection Report

dated July 4, 2011, stated he had inspected that date. Nor did it include authority to inspect the three switches at OOL 402.50, 402.80, and 403.60 listed on Willingham's July 4, 2011, Track Inspection Report. That meant, Roadmaster Wilson testified, that "he didn't have any track authority on the track that he reported he inspected" on July 4, 2011. The only exceptions were the two switches he listed that he inspected at OLC 421.00 and OLC 421.30.

Roadmaster Wilson works out of three different headquarters, Birmingham, Celera, and Clanton. Mr. Willingham works out of Birmingham headquarters. Roadmaster Wilson learned of the discrepancies between Mr. Willingham's Track Inspection Report and EC-1E Form while at a headquarters other than Birmingham. He therefore called Engineer of Track Robert Wolfe, who was in Birmingham, for assistance in investigating the situation.

Pursuant to Roadmaster Wilson's request, Engineer of Track Wolfe called Mr. Willingham into his office on July 6 to question him about the discrepancies that Mr. Wilson had found. Mr. Wolfe asked Mr. Willingham what kind of protection he had when he inspected the three switches with the OOL milepost limits listed on the Track Inspection Report dated July 4, 2011. At first he did not respond, Mr. Wolfe testified, and when Mr. Wolfe said that he needed to know his authority number, Mr. Willingham said that he just drove up to them, got out, and looked at them.

If someone performs an inspection without EC-1E authority, he must fill out a Statement of On Track Safety ("SOTS") form. There are lines on the form for the Track Inspector to enter his Name, the Date, Time, and his Track Limits. In addition, the employee must comply with the following instructions on the form: "2. Determine the amount of time that it will take you to clear the track and place an 'X' on the appropriate

chart. 3. Determine the maximum speed authorized for the track you will be fouling by using your Timetable and place an 'X' adjacent to that speed in the chart checked in Step 2." The form contains three charts respectively for 10 seconds, 20 seconds, and 30 seconds clearance.

Mr. Wolfe asked Mr. Willingham to get his SOTS book so he could see it. Mr. Willingham went to his truck and brought his SOTS book back to Mr. Wolfe. Mr. Wolfe looked at the SOTS form dated July 4, 2011. It did not show whether it was main line or branch line track, and it did not show the mileposts. In addition Mr. Willingham had not placed an "X" on the proper chart to show either the clearance time or the maximum speed authorized. Mr. Wolfe asked Mr. Willingham when the form was filled out. Mr. Willingham said on Monday, July 4th.

Mr. Wolfe, according to his testimony, looked at the form again and asked, "Mr. Willingham, did you do anything else to this form today?" He said, "Yes, I put the date on it, 7/4/11." After he looked at the form a little bit closer, Mr. Wolfe stated, he asked Mr. Willingham if he was saying that he filled out the form on Monday and added the date that day, which was Wednesday, July 6th. Mr. Willingham then said, "No. I filled the report out when I was coming in from the truck to the office."

Mr. Wolfe then questioned Mr. Willingham about the Track Inspection Report dated July 4, 2011, that he had entered into the computer system on that date. Mr. Willingham said that the form was put in on July 4th, but he made the inspection on July 2nd. Mr. Wolfe identified a booklet called Track Safety Standards Part 213 published by the Department of Transportation Federal Railroad Administration Office of Safety. Section 213.369 of Part 213 provides as follows:

§213.369

* * *

(b) Except as provided in paragraph (e) of this section, each record of an inspection under §213.365 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. . . .

* * *

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that –

* * *

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

Mr. Wolfe interrupted his meeting with Mr. Willingham and told him that they would meet again later that day. He then called Roadmaster Wilson to come to Birmingham to look further into the matter involving Mr. Willingham. Mr. Wilson arrived at Birmingham headquarters around 10:30 in the morning, and both of them together then met with Mr. Willingham. In their meeting, Mr. Wolfe testified, Mr. Willingham stated that he was not aware of the severity of the situation and that he didn't think that there was that much to it. Mr. Willingham was asked to give a written statement and provided the following:

Sat. July 2nd 2011

I was covering for my co-worker who wanted the day off. I got an EC-1 from the NAS Magella MP 00L 395.3 to the NAS SE Dudley M.P . OLK 428.0. While doing my heat run I stopped to inspect four (4) turnouts. I finish up my heat run & I was ready to get away from work because it was my off day. So I change and go home to enjoy the rest of my "off day." I didn't sync the computer or enter in any of the work I had done because I felt there were no issues.

Monday July 4, 2011

I was told to do a heat run by my roadmaster. Before I left the office I entered in what I had done on Sat to get a head start on the tracks transversed [sic]. So I enter in what I had done on Sat. July 2nd 2011. I do my heat run, give up my EC-1, then head home. After I leave the office, I was off the clock, so I buy me some beer. I get a phone call telling me of a flood run. I say that I've been drinking & that I'll take a shower, eat, & come back into work in about a hour. I was told to "stay home," so I did. I also asked if he was going to be able to, – he cut me off & said he will "handle it."

Wednesday July 6, 2011

I was asked by Robert Wolfe to provide him with our SOTS book for Sat & Monday. I had filled out a page for Sat but not Monday. I filled one out not knowing what he was wanting from me. I did everything in such a rush that I didn't remember that I had no reason to fill out a SOTS book for Monday. I was afraid of Wolfe & I didn't know what was going on. He asked me if I had filled out the SOTS book today & I told him I put the date (7-4-11) on there. Then he asked me again if I had wrote it today & I said yes once I knew that I didn't need it, considering I didn't inspect the turnouts on Monday. But he said he is only dealing facts & that's what I had put in the computer. My track time didn't reflect the turnouts I had inspected.

/s/ Chris Willingham
7/6/11

Mr. Wolfe testified that during his investigation he was unable to determine if there was really an inspection made on July 2, 2011. According to his investigation, Mr. Wolfe stated, Mr. Willingham did perform a heat inspection on the Birmingham Mineral Subdivision on July 4, 2011. A special inspection report was not entered into the ITIS computer system for that inspection as should have been done.

The Claimant, Chris Willingham, testified as follows. He filled out an inspection report for July 4, 2011, but not a heat inspection report. On July 4th he had EC-1 track authority from South Bessemer Yard limit OLC 405.1 to the South Brookwood Yard limit OLK 430.0. He did not enter an inspection report for July 2nd because he "accidentally forgot." At the time he was not aware of the requirement to enter an inspection report on

the day that the inspection is done, but he is now.

On July 6th, Mr. Willingham testified, Mr. Wolfe asked him if he filled out the SOTS form dated July 4, 2011, on that day (July 6th), and he told him that he put the date July 4 on it that day. Then Mr. Wolfe asked him if he filled out the entire form on July 6th, and he said, yes, he did. Mr. Wolfe then "was irate, furious." Asked by the conducting officer, "Did you falsify FRA track inspection documents?" Mr. Willingham answered, yes. Questioned by the conducting officer, "Did you fabricate a track authority document?," he stated, yes. Asked if at any point he was dishonest when questioned by Mr. Wolfe, he acknowledged, yes.

Mr. Willingham's attention was directed to his written statement that said that after he left the office on Monday, July 4th, he bought some beer. He was asked what time he bought the beer. He stated that it "was roughly about 15:20." He released his EC-1 track authority on July 4th 85 minutes after he acquired it, he stated, which would have been around 14:45. When he released his authority, he testified, he was at the south end of Yolandy at milepost OLK 421.3. The driving time from there to the yard office, he stated, was 30 or 35 minutes. He arrived back at the yard office about 15:15 hours, he testified. He began his tour of duty that day, he testified, "roughly 10:30 – 11:00, somewhere in there."

Mr. Willingham was asked by the conducting officer why, when he entered the July 2nd inspection report in the computer on July 4th, he did not go back and put the correct date on the report. He answered, "We did everything on the computer. I have not received proper training on how to go back and put a different for that day that I'm previously on the screen for." (Tr. 98). He was asked, "Did you ask Mr. Wilson before you entered it on the 4th to tell you how to go back and put it in on the 2nd?" He stated,

"No because like I said before when I done the inspection on Saturday, there was nothing wrong with the switches. There's nothing ever wrong with those switches and that's why I inspected them on a Saturday and so I put them in the computer on Monday and I realized today after Mr. Wolfe had said that if – I believe brought up if there was a track caused derailment there if they say that nothing has been in the computer for that, that it can fall back on me, you can pull those reports up and see that nothing was entered and I realize why the big deal is now and at the time I did not and that's why I put it in on Monday." (Tr. 99).

Mr. Willingham testified that when he performs a heat run, he is required to document it with a special inspection report entered into the ITIS computer system. He acknowledged that one of the requirements of an FRA Inspector is to properly fill out an inspection report and know how to do it.

Mr. Willingham testified that he did not do a heat run inspection of the track from milepost 421.3 to 430.0 on July 4th because it had been raining since the morning on that part of the track. He stated that he has a close friend who lives around that area, and she said that it had been raining there all morning. Therefore, he testified, "the rail would not have gotten warm enough to cause any kind of track disturbance."

Permitted to give a statement in his own behalf at the conclusion of the hearing, Mr. Willingham stated that he is good at track inspecting and going out and finding stuff wrong with tracks. He feels that he has done a good job track inspecting, he asserted. His rule violations, he stated, were a momentary lapse in judgment, an accident. Where he is "messing up," he declared, is with respect to the computer. With the proper computer training, he asserted, he would "be a complete track inspector." He is a hard worker, he stated, not afraid to get dirty on the job. There have been no derailments on

the tracks he inspected, he asserted. He works safely. Mr. Willingham expressed his understanding of why Mr. Wolfe and Mr. Wilson were upset with him. He needs his job, he asserted. He is a perfectionist, Mr. Willingham stated, and does not like to make mistakes. He reiterated that he does a good job and declared that nobody has found anything wrong with his track work. He apologized for taking up everyone's time with the hearing that was held.

Following the close of the hearing, by letter dated August 10, 2011, the Division Engineer notified the Claimant of the Carrier's determination that the hearing was conducted in accordance with his contractual due process rights and that all objections were properly addressed by the conducting officer during the hearing. A review of the transcript and exhibits, the letter stated, confirmed that the charges placed against him "were valid, accurate and proven." There was sufficient proof, the letter continued, that he was "guilty . . . as charged" and that his "actions were in violation of the cited CSX Transportation Operating Rules and Regulations." It was his decision, the Division Engineer stated, that the discipline to be assessed was the Claimant's "immediate dismissal in all capacities from CSX Transportation."

It is the position of the Carrier that the Claimant was afforded a fair and impartial investigation in accordance with the parties' Agreement. Contrary to the Organization's assertion, the Carrier argues, the conducting officer did not demonstrate prejudice. Further, the Carrier contends, previous awards have held that it is not required to provide the Organization prior to the hearing with documents it intends to introduce into evidence at the hearing. Nor, the Carrier argues, was the Claimant denied union representation when interviewed by management in the preliminary investigation of the matters here involved.

Regarding the merits of the charges, the Carrier contends that it met its burden of producing substantial evidence of the Claimant's guilt. The Claimant, the Carrier argues, violated Rule GR-2 by being dishonest, making false statements, and concealing facts during the preliminary investigation of his conduct. In addition, the Carrier asserts, he falsely told the Engineer of Track that he filled out a SOTS form and then filled out the form with false entries. He also admitted during the hearing that he was dishonest in the preliminary investigation, the Carrier notes.

Further, the Carrier contends, the Claimant violated Rule GR-2 by claiming time for hours not worked. In addition, the Carrier argues, he willfully violated GR-2 by neglecting his duties and endangering life or property by failing to conduct a heat inspection on all of the track assigned for such an inspection. The Claimant violated Rule 704-B, the Carrier asserts, by failing to complete a SOTS form as required. He violated FRA §213.369(b), the Carrier contends, by failing to enter inspection reports on the day of the inspection. There is no merit, the Carrier argues, to the Claimant's defense that he was not properly trained in the computer system. The discipline assessed, the Carrier contends, was fully justified by the terms of the IDPAP and the seriousness of the offense.

The Organization has raised several procedural arguments in support of its case. At the hearing it asked that the conducting officer recuse himself or that the charges be dropped because when the charge letter came out, the Organization representative called the conducting officer to talk about a waiver. Allegedly the conducting officer said that the Claimant should be going into another line of work. This, the Organization argues, showed that the conducting officer would not be able to conduct a fair and impartial hearing. The conducting officer refused to recuse himself. The Organization requests

that the charges against the Claimant therefore be dismissed.

Published Board decisions regarding conducting officers do not require absolute impartiality on their part. For example, Third Division Award No. 24207 found that the claimant in that case was not deprived of a fair hearing because the conducting officer was also the charging officer. This Board believes that a comment by a carrier official reflecting on the guilt or innocence of a claimant in response to a settlement inquiry initiated by an Organization representative is not a basis for disqualifying the official from serving as conducting officer.

A contrary ruling would stifle the free and open discussion between the parties that is necessary for the settlement of cases. The Board believes that it is in the best interests of the parties and the employees to encourage the settlement of disciplinary cases. If either party feels that it cannot express itself frankly about the merits of a particular case, settlement possibilities will suffer. A party should not be penalized for speaking in good faith on why a case should or should not be settled.

The critical question in this case is whether the conducting officer provided the parties a fair and adequate hearing which allowed them to present their respective evidence and afforded the Claimant and the Organization the opportunity to make closing argument in the Claimant's behalf. The Board has carefully perused the record and finds that the conducting officer provided both parties a fair hearing. Specifically with regard to the Claimant, he and the Organization were allowed to call witnesses, to cross-examine the witnesses called by the Carrier, and present their own evidence. They were also permitted to voice objections and to make argument in support of the Claimant's case. In addition the Claimant and his Organization representative were both treated courteously. The Board finds that the conducting officer was not required to recuse himself in this case

and that his failure to do so did not deprive the Claimant of a fair hearing.

The Organization also argues that the Claimant did not receive a fair hearing because the Carrier denied its request to be provided certain evidentiary documents prior to the hearing and refused to provide the documents. A number of prior Board decisions have held that there is no obligation on the part of the Carrier to furnish evidentiary documents of the kind here in dispute to the Organization prior to the hearing. Public Law Board No. 7120, Awards Nos. 3, 27, and 73; Public Law Board No. 7008, Awards Nos. 16 and 25. Consistent with the earlier awards, the Board finds that the failure to provide the Organization the requested documents prior to hearing is not a basis for finding that the Claimant was deprived of a fair hearing or for dismissing the charges against him.

The Organization also contends that the Claimant's contractual due process rights were violated because he was not offered Union representation when he was interviewed by management officials during its preliminary investigation and asked to give a written statement. The governing contract provision in such a situation is Rule 25, Section 1(c). In Public Law Board No. 7120, Award No. 96 this Board interpreted the language of that provision and held that Rule 25, Section 1(c) does not come into play until an official Investigation has been scheduled regarding a particular incident. As of the time of the preliminary investigation, Mr. Willingham had not been required to attend an Investigation, and no determination had yet been made that a hearing would be scheduled. On those facts the Carrier was not required to offer him union representation before interviewing him or taking his statement. Mr. Willingham made no request on his own for union representation. Under these circumstances the failure of the Carrier to provide him union representation did not violate his contractual due process rights.

The Board will now consider the substantive aspect of the case. It is not disputed in the record that the Claimant falsified a SOTS form and lied about it to Engineer of Track Wolfe. He submitted the form to Mr. Wolfe in response to Mr. Wolfe's request for evidence of the Claimant's authority to inspect certain switches on July 4, 2011, as represented in an Inspection Report filed by the Claimant dated July 4, 2011.

The Claimant has attempted to excuse his dishonesty with regard to the SOTS form on the basis that he acted in a rush, did not at first remember that he had no reason to fill out the form for Monday, July 4th, and that he was afraid of Mr. Wolfe. According to the Claimant's own testimony, however, the SOTS book with the forms was in his truck, and he walked from Mr. Wolfe's office to his truck to get the book to bring it back to Mr. Wolfe. During the time that he was walking to and from his truck he was by himself and not under pressure from Mr. Wolfe. He should have remembered that two days previously, on July 4th, he came in specially to do an inspection and entered into the computer system a report of his July 2nd inspection with a July 4th date. Had he provided that information to Mr. Wolfe, he would have been able to account for how he inspected the switches in accordance with his authority. The fact that he did not tell the truth to Mr. Wolfe but, instead, wrote up a false SOTS form, and gave it to Mr. Wolfe indicates that he may have been trying to hide something from the Carrier.

A review of the evidence in the case shows that prior to providing the SOTS form to Mr. Wolfe, the Claimant had acted in a questionable way and that there were things that he might want to hide. On July 4, 2011, the Claimant entered into the ITIS computer system an official Daily Track Inspection Report of an inspection that he allegedly performed on July 2, 2011. FRA regulations require that a record of an inspection be prepared on the day the inspection is made. If the record is stored electronically, FRA

regulations permit the Inspection Report to be entered into the computer system within 24 hours following the completion of the inspection.

The Claimant stated that he was not aware of the time requirements under the FRA regulations. The Board finds it difficult to believe that a trained and qualified Track Inspector with 15 months' experience on the job would be unaware of the requirement to input a report of a track inspection within 24 hours of completion of the inspection. Indeed the Claimant's testimony that he "accidentally forgot" to enter a report of his July 2nd inspection indicates that he normally enters his inspection reports on time. The Carrier would have been justified in not crediting the Claimant's testimony that he was not aware of the time requirements for reporting track inspections.

There is no adequate explanation in the record why the Claimant waited until July 4, 2011, to make a report of the inspection he performed on July 2, 2011. In fact he gave conflicting explanations for the delay. He was asked by the conducting officer, "Did you enter an inspection report for July 2nd?" He answered, "No sir, I accidentally forgot." (Tr. 92). Subsequently the co-conducting officer asked the Claimant, "Mr. Willingham, when you were asked why you did not complete a track inspection report for Saturday, July the 2nd, I believe you said that you accidentally forgot, is that correct?" He answered, "Yes, sir." (Tr. 98).

In his written statement, however, the Claimant gave a different explanation for not submitting the Track Inspection Report on July 2nd. In the part of his written statement headed "Sat July 2nd 2011" the Claimant wrote, "I didn't sync the computer or enter in any of the work I had done because I felt there were no issues." Thus rather than accidental forgetfulness, as testified to at the hearing, the Claimant gave the absence of issues as the reason for not entering a report of his alleged inspection on July 2nd.

Carrier Exhibit 5 shows that the Claimant worked a full eight hours on Sunday, July 3, 2011. Whatever the reason for his failure to input the Track Inspection Report on July 2, 2011, the Claimant should have entered it into the computer system no later than July 3, 2011, especially since FRA Track Safety Standards Part 213, §213.69(e)(2) states, "The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection." The Claimant offered no explanation for not inputting the Track Inspection Report on July 3, 2011, after he failed to do so on July 2nd.

It is possible that the reason that the Claimant did not at first tell Engineer of Track Wolfe that he inspected the switches on July 2nd instead of July 4th was that he did not want to reveal that he violated the FRA and Carrier's rules in not reporting the inspection on time. It was only after Mr. Wolfe got him to admit that the SOTS form was falsified that the Claimant told him about reporting the July 2nd inspection on July 4th. At that time the Claimant had no choice but to tell the truth about reporting the July 2nd inspection on July 4th.

The evidence also indicates that the Claimant may have had an improper reason for reporting his July 2nd inspection as having been performed on July 4th. The assigned work to the Claimant for July 4, 2011, was a heat run inspection from milepost 00L 394.7 to milepost OLK 429.3 (Tr. 84). By his own testimony the Claimant was required to document the heat inspection that he performed on July 4th (Tr. 102). Yet he did not document that inspection on either July 4th or July 5th even though he worked on both days. Instead of inputting the inspection he actually did on July 4th, the Claimant entered into the computer system on that date a report of the inspection that he performed on July 2nd, but incorrectly stated that the inspection was performed on July 4th. The inspection

that the Claimant actually performed on July 4th was never reported.

In addition to not reporting his July 4th inspection, the Claimant never completed the heat inspection that he was assigned to do on that date. By his own testimony, instead of inspecting the track until milepost 430.0, as he was assigned to do, and for which he had EC-1 track authority, he stopped at milepost 421.3 (Tr. 95, 103). He did so without requesting permission from the Roadmaster or any other superior to cut short the inspection. Moreover, he began the inspection at milepost OLC 405.1 instead of OOL 394.7 (Tr. 101).

Had the Claimant input the actual inspection performed by him on July 4th, it would have been apparent to anyone who might decide to check the record that the inspection performed by him was incomplete and that he disobeyed the instructions given to him regarding the inspection. This raises the possibility that the Claimant's input of the wrong Inspection Report on July 4th (the July 2nd inspection instead of the actual July 4th inspection) was a purposeful act on his part to cover up the fact that he did not perform the full heat inspection that he was assigned to perform that date. In this connection the Board notes that the written statement given to the Carrier by the Claimant on July 6th failed to state that he did not complete his heat run. Instead he wrote, "I do my heat run, give up my EC-1, then head home."

If the Claimant's failure to input the July 2 inspection in a timely manner was accidental as repeatedly testified by the Claimant at the hearing, then he surely should have input the July 4 heat inspection into the ITIS computer system in a timely manner. It is not reasonable to argue that on July 4th, when the Claimant was rectifying a failure to make timely documentation of an earlier track inspection, he was unaware of his responsibility to make timely input of a report of the inspection that he was performing

that very day. Yet the Claimant did not input a report of the July 4 inspection on that day or on July 5th, even though he worked a full shift plus overtime on July 5th. This lends credence to the suspicion that the Claimant was intentionally passing off the inspection he performed on July 2nd as having been done on July 4th. Such conduct, of course, would constitute falsification.

There is additional evidence that the Claimant's dating of his report of his July 2 inspection as July 4 was not innocent. He testified that he did not know how to work the computer so that an inspection report input on July 4th could be backdated as July 2nd. That nevertheless raises the question why he did not at least send a memorandum to his Roadmaster or Engineer of Track explaining that the official Daily Track Inspection Report he filed that contained an Inspected Date of 07/04/2011 on its face was really performed on July 2, 2011. The Claimant's failure to do so suggests that he was intentionally trying to pass off the July 2nd inspection as his July 4th inspection.

The Carrier's Individual Development & Personal Accountability Policy lists "dishonesty" among the "Major Offenses" that would "warrant an employee's removal from service pending a formal hearing and possible dismissal from service for a single occurrence if proven responsible." In this case the evidence clearly shows that the Claimant acted dishonestly with regard to the SOTS form. The many unanswered questions in this case raised above regarding the Claimant's conduct in violation of Carrier rules, and his motive to conceal his failure to comply with the instructions given to him concerning the heat inspection to be performed by him on July 4th, provided substantial evidence to support a Carrier determination that he falsified the SOTS form to conceal one or more rules violations on his part. The Claimant's conduct warranted dismissal under the Carrier's IDPAP, and the Board will not disturb the Carrier's action.

The Board also notes the evidence that 8 hours' overtime and 8 hours' holiday pay were entered on the payroll record for the Claimant for July 4, 2011, although, at most, he worked 5 hours on that date. The Board has not considered that evidence, however, in deciding this case because the charge letter made no reference to alleged falsification or dishonesty with regard to pay.

Rule 25, Section 1(d) requires that "[a]n employee who is accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused . . . ." (emphasis added). That requirement is not fulfilled by the mere listing of a rule in the charge letter. For example, in the present case, General Regulations GR-2 covers a multiplicity of possible misconduct. An employee would not be able to know from the reference to GR-2 in the charge letter that he or she was being accused specifically of an offense related to payroll.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
November 14, 2011