

PUBLIC LAW BOARD NO. 4244

Award No. 233

Case No. 240

Carrier File No. MWE980928AB

Organization File No. 190-13D2-989.CLM

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on August 31, 1998, the Carrier dismissed Mr. R. G. Gameros and F. J. Alanis for [an] allegedly [sic] violation of Rule 1.6, Conduct, of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with their alleged falsification of weekend travel allowance mileage claimed for travel between Hereford, Texas and Fresno, California while working on System Tie Gang TP-13 for the weekend of August 7 and 8, 1998.
2. As a consequence of the Carrier's violation referred to above, claimants shall be reinstated to their former positions with seniority restored, they shall be paid for all wages lost and discipline shall be removed from their record.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

The claimants, machine operator F. J. Alanis and sectionman R. G. Gameros, were assigned to System Tie Gang TP-13 during the time period which is at issue in this case. The claimants resided a considerable distance from their work assignments and traveled to their residences on weekends. Each claimant submitted a single travel allowance sheet to the Carrier wherein each had claimed travel allowance for the weekends of July 31 through August 2, August 7 through August 9, and August 14 through August 16, 1998. For the weekend of August 7 through August 9, 1998, each claimant requested travel allowance reimbursement for a round trip of 2,502 miles from the work site at Hereford, Texas to his home in Fresno, California, and then returning to Hereford. However, the claimants did not

travel to Fresno on August 7 through 9, 1998, but instead stayed at the Best Western hotel located in Gallup, New Mexico the nights of August 7 and 8, 1998. Gallup is located approximately 420 miles from Hereford.

The Carrier notified the claimants to attend an investigation to develop the facts and determine their responsibility, if any, concerning their alleged falsification of travel allowance mileage for weekend travel on August 7 through 9, 1998, between Hereford, Texas and Fresno, California. As a result of the investigation, the Carrier dismissed the claimants from service for violating Rule 1.6 of the Maintenance of Way Operating Rules (MWOR).

The record reveals that an assistant foreman with the gang usually collected travel allowance sheets from the employees who traveled over the weekend on the following Monday. At the investigation, claimant Gameros testified that he completed his travel allowance sheet on Wednesday or Thursday following the weekend at issue. Gameros further testified that he did not travel all the way to Fresno as stated in his travel allowance sheet, and explained the inclusion of the mileage claimed was the result of habit. According to Gameros, he did not intend to falsify his mileage. Claimant Alanis testified that he decided to stay in Gallup because he was too tired to continue traveling to Fresno. Similar to Gameros' testimony, Alanis testified that he did not intend to defraud the Carrier in any manner.

A review of the travel allowance forms completed by the claimants reveals that each form contained six lines for an employee to record miles traveled from the work site to home

and back to the work site. In this case, the forms were supplied to the claimants with a great deal of information already on the forms, including the work site and the dates of travel. The claimants simply filled in the location of their homes and the round trip miles they would normally travel between the work site and their homes, just as they had done routinely in the past. The Board concludes that the claimants made a mistake when they included the Fresno round trip of August 7 through 9, 1998 on their travel allowance sheets submitted to the Carrier. However, there is no evidence of intentional fraud. Had the forms not been partially filled out before they were supplied to the claimants, or if the Carrier required the employees to provide a single form for each trip made, the opportunity for an employee to make a mistake like that made by the claimants could have been avoided.

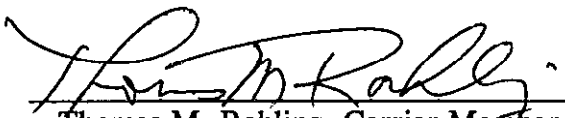
Even though there is not clear and convincing evidence of fraud in this instance, the fact remains that the claimants were not careful when completing their travel allowance forms; and had the Carrier not discovered that the claimants had not traveled to Fresno, each claimant *would have wrongfully received \$625.00 in travel allowance. All employees, including the* claimants, are responsible to carefully fill out all documents that concern their receiving compensation from the Carrier. The claimants were negligent and their actions warrant discipline, although not dismissal. Therefore, each claimant's dismissal is reduced to a thirty-day suspension.

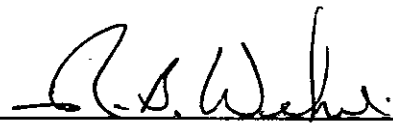
Finally, this Board recognizes and affirms that all employees must take care to be accurate when filing for travel allowance. The travel allowance form contains a signature line that indicates the employee traveling is certifying that the miles claimed were actually traveled.


Due to the way the forms were usually handled on this particular gang, there was an extraordinary opportunity for an erroneous entry; and in the case of the claimants that is what happened. Nevertheless, this Board does not condone the claiming of travel allowance for miles not traveled, whether it be inadvertently or intentionally. The decision in this situation is based strictly on the unique circumstances of this case. Additionally, as result thereof, the Carrier may wish to change the way the employees are required to claim the trips, so that similar errors can be avoided in the future. In any event, one should not conclude from this case that any attempt to defraud the Carrier for these type allowances in the future will be excused simply because the employee claims an inadvertent error was made when filling out the form.

AWARD

The claim is sustained to the extent provided above. The claimants' dismissal shall be reduced to a thirty-day suspension. They shall be reinstated in accordance with the provisions of the prevailing scheduled agreement and compensated for time lost in excess of the thirty-day suspension. The Carrier is to comply with this Award within thirty (30) days from the date of issuance.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 23rd day of August, 1999.