

**PUBLIC LAW BOARD NO. 5418**

**Case No. 79**

**Award No. 79**

**PARTIES**

**to**

**DISPUTE:**

Brotherhood of Maintenance of Way Employees

-and-

Pan Am Railways

**STATEMENT OF CLAIM:**

“(a) Carrier’s Dismissal of Claimant Eric Cooper was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Schedule Agreement.

(b) Claimant Cooper shall be returned to service and compensated for all lost wages and benefits which would accrue to him as provided for in the Scheduled Agreement and his record cleared of the charge.”

**FINDINGS:** This dispute arose as a result of the claimant being charged with the following offense:

“your responsibility, if any, relating to the following charges:

**Violation of Safety rules PGR-C (para.3), PGR-N (para.1&4) and PGR-L**

Specifically, on September 21, 2009 a routine check of the records for the GPS tracker installed on the company truck to which you are assigned has revealed several discrepancies between the time the truck was stopped and what is reflected on your time sheets. There is a difference of anywhere between forty (40) to sixty (60) minutes per day for two weeks prior to the check.

Additionally, on September 20, 2009, you reported to your supervisor, Gerald Lucier, that you worked fifteen (15) hours of overtime. After being questioned several times you recanted and stated that you only worked ten (10) hours on the day in question. The GPS tracker indicates that you actually worked only nine (9) hours. Also, the recorded time from the GPS tracker is stated as 0530, your start time on this day was supposed to be 0700. You were not authorized by your immediate supervisor to start at an earlier time.”

Following a formal hearing, the Carrier found the claimant guilty of violating the above cited rules, and assessed him discipline in the form of being dismissed from service effective March 26, 2010.

The undisputed facts of this case show the claimant was working as a Work Equipment Repairman, with assigned bulletin hours of 0900 to 1700, and was the sole operator of Truck #1218 during the period September 8 to 20, 2009. During an audit of the GPS Tracker on Truck #1218, the Carrier found discrepancies between the time sheets submitted by the claimant and the information provided by the tracking device, that indicated the claimant submitted excessive overtime for the dates cited infra.

The following is a summary of the overtime claimed by the claimant and the overtime listed by the GPS Tracker for Truck #1218:

<u>2009 Dates</u>	<u>GPS Listed</u>	<u>Claimant Claimed</u>	<u>Difference</u>
9/08	5' 47"	7' 30"	1' 48"
9/09	5' 38'	7' 15'	1' 47"
9/10	6' 6"	7' 35"	1' 29"
9/11	4' 25"	5' 45"	1' 20"
9/12	17' 17"	18' 30"	1' 13"
9/14	5' 9"	6' 30"	1' 20"
9/16	No Overtime	30"	30"
9/17	3' 47"	5'	1' 13"
9/18	5' 28"	7'	1' 32"
9/20	8' 48"	10'	1' 12"

The Carrier asserts, that even giving the claimant the benefit of doubt that his post inspection of the truck took thirty (30) minutes, he claimed forty (40) to sixty (60) minutes overtime per day performing unconfirmed and undocumented work. In addition, they vigorously assert the claimant had no authority (written or verbally) to start work prior to his bulletined hours.

Conversely, the Organization asserts the Carrier failed to prove with any credible evidence that the claimant violated any Carrier rules. They point out that on each of the dates cited, the claimant gave a detailed explanation regarding the extra work performed beyond that of his post truck inspection, and that such work was never disputed by the Carrier. In his defense, the claimant testified that the overtime work that he performed was necessary and directly connected to the equipment he was servicing.


After due study of the entire record, including the parties' arguments presented in support of their respective positions, the Board cannot sustain the Organization's position in this case. While the Board found the claimant's work related assertions to be somewhat plausible, the record is devoid of any evidentiary support to his claim. In addition, the record conclusively shows that he was not authorized to start his assignment prior to his bulletined hours.

Therefore, based on the testimony brought forth in the record, the Board finds the Carrier properly concluded that the claimant was guilty of the offense for which he was charged and that discipline was warranted. However, without minimizing the seriousness of the offense, because it may warrant dismissal, the Board does take into consideration all of the factors involved in this case, including the claimant's discipline free service, and deems the assessed discipline in its present form is excessive.

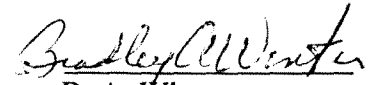
Therefore, the claimant is to be restored to service, but without back pay for time lost. The claimant is to understand that the purpose of this Award is to give him another chance to be a safe and reliable employee, and the lengthy suspension without back pay will emphasize the gravity of this situation, Also, he should understand that any future infractions of the rules on his part could result in the permanent termination of his service.

The Carrier is directed to implement the Award within 30 days of receipt.

**AWARD:** As specified in the Findings.

  
Francis J. Domzalski  
Neutral Member

  
A. F. Lomanto  
Carrier Member

  
B. A. Winter  
Organization Member

**Dated:** 12/17/10