

PUBLIC LAW BOARD NO 5850

**Award No.
Case No. 153**

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on December 13, 1998, Mr. J. Edenfield was dismissed from service for alleged violation of Rule 1.6 of the Carrier's Maintenance of Way Operating Rules, effective January 31, 1999, in connection with his alleged falsifying of time documents on October 4, 5 and 6, 1999.
2. As a consequence of the Carrier's violation referred to above, Mr. Edenfield shall be reinstated with seniority, vacation, all other rights unimpaired, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

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.

The charge is falsification of time documents on October 4, 5 and 6, 1999. The discipline, dismissal, was imposed after the customary investigation.

Ordinarily, such a charge, if proven, does result in dismissal. Claiming pay for time on days not worked or for hours not worked is theft, pure and simple. But in this instance, it developed that although Claimant may have claimed pay for hours

not worked, the Board recognizes that the Carrier had allowed employees to miss time and then work weekends or perform service outside their regular assignment to "make up" for the time missed. By the time the hearing was held, the Carrier had discontinued the practice; however, this Board cannot consider the Carrier's belated effort to correct what ultimately can lead to serious problems. In this case, for instance, Claimant missed work during the week and then worked outside his regularly assigned hours to "make up" time he missed. Based upon the record, it appears Claimant had not worked enough hours to make up for all the time he had missed. The fact, however, that he did not keep accurate track of the hours he had missed, and the hours he worked to make up for those hours missed, does not warrant permanent dismissal.

It is the Board's determination that the dismissal be converted to a long suspension that ends on August 31, 2000. Claimant is to be returned to service with all his seniority rights intact, and he is to be compensated for all time lost from September 1, 2000, until the day he resumes service with the Carrier.

AWARD


Claim sustained in accordance with the Findings.

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


Rick B. Wehri, Labor Member


Thomas M. Rohling, Carrier Member

Dated: 2/1/01