

PUBLIC LAW BOARD NO. 5850

**Award No. 209
Case No. 209**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on July 18, 2001, when it issued Mr. M. Garcia, a Formal Reprimand for allegedly violating Maintenance of Way Operating Rules 1.13, and 1.6, for failing to comply with instructions resulting in a false time roll entry.
2. As a consequence of the violation referred to above, the Carrier shall remove any mention of the incident from Mr. Garcia's personal record, and make him whole for any wages lost, per 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.

Claimant was asked by the Roadmaster to take two cylinders from where he was working at Merced to Fresno for another crew working on a project at Divisadero Street.

Claimant agreed but because of the weight and grime, his Foreman told him to take the welding truck and bring it back in the morning.

One glaring omission in this transcript is the lack of any verification of time or of distance traveled. For instance, how far is it from Merced where the cylinders were

stored, to Fresno where they were delivered, to Claimant's home from Fresno and then from Claimant's home to the work site at Merced.

Claimant stated he left Merced around 4:00 PM; it took him about one hour ten minutes or one hour twenty minutes to drive the distance, about twenty minutes to unload, then he drove home.

Claimant claimed two and one half hours overtime. The Roadmaster thought this was out of line and convinced Claimant he should only have claimed one hour. Claimant stated he would, then Claimant alleged it slipped his mind and he did not correct the payroll.

The Roadmaster then instigated these proceedings. Claimant is surely entitled to the time worked in excess of his normal hours. He spent one hour thirty minutes to one hour forty minutes in effecting the delivery, then the drive between delivery point and home.

The burden of proof is upon the Carrier to substantiate its contention of wrong doing by furnishing substantial evidence supporting its charge. This has not been accomplished. The only thing established was that Claimant agreed to cut his time but did not. This does not relate to insubordination, nor has the Carrier established that he falsely claimed time.

AWARD

Claim sustained.

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
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrl
Rick B. Wehrl, Labor Member

Thomas M. Rohling
Thomas M. Rohling, Carrier Member

Dated: September 30, 2002