

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 236**

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 allegedly violated the Agreement when investigation was held on April 9, 2003, and Mr. N. L. Lopez was dismissed from service for allegedly violating Rule 1.6, Part 4 of the Maintenance of Way Operating Rules in connection with alleged falsification of expense report for weekend travel and miles claimed that were never driven.
2. As a consequence of the Carrier's violation referred to above Mr. Lopez shall be reinstated with seniority, vacation, all rights unimpaired and pay for all wages lost commencing March 5, 2003 continuing forward and/or otherwise made whole.
3. That any mention of the charges relating to this incident shall be removed from Mr. Lopez's personal record.

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 facts leading to the investigation and notice of investigation were set forth in Case No. 235. To reiterate, in addition to the falsification of a travel expense claim, Claimant was also charged with:

"...conspiring with employees R. P. Avalos and G. C. Lopez enabling them to submit false expense reports...."

Claimant actually went home flying from Las Vegas, to Chicago and back to Phoenix. He did claim a driving expense. He did not qualify to fly home. He paid \$360.00 for the ticket, whereas his claim for driving amounted to \$925.00.

Claimant readily admitted receiving the notice of charges. His Representative did challenge the Carrier contending the investigation was not fair or impartial based upon Carrier suspending the Claimant pending the results of the investigation (a pre-judgment), the investigation notice contained no Rules alleged to have been violated, and that the Carrier did not furnish the material requested prior to the investigation. The Carrier correctly responded stating the Agreement did not so provide, but the Representative would be furnished copies of everything presented at the investigation, and he would be afforded ample time to review same.

In addition to the testimony by various Carrier witnesses, Claimant, speaking through an interpreter, readily admitted he flew home and when asked why did he insist at first that he drove, responded:

"I said that because I never thought that they would find out that I didn't drive and that I had flown in...." (response to Question 267)

Regardless of any alleged miscue in the handling of the investigation, all such contentions are set aside by the Claimant's confession of wrongdoing. See the language set forth in Award 2 of Public Law Board 1790 as quoted on page 4 of Case No. 235.

Even without the confession of wrong doing by Claimant, the Carrier furnished sufficient evidence of Claimant filing a false mileage claim. The charge of conspiring with the Claimants in Case Nos. 235 and 237, was not necessarily established, but there

can be no other way each Claimant could have obtained a detailed receipt from the home port other than Claimant securing same for each of the other two Claimants.

The Carrier had established sufficient evidence proving Claimant made a bogus claim for mileage in an effort to defraud the Carrier. The discipline of dismissal is upheld by this Board.

AWARD

Claim denied.


ORDER

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


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member

Dated: Sept. 4, 2003


Thomas M. Rohling, Carrier Member
William L. Yeck
as of August 21, 2003