

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 265**

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 12, 2004, when it withheld the Claimant, Mr. J. E. Frazer, from Service and subsequently dismissed him for Allegedly falsifying purchase receipt between October 1, 2003 and June 14, 2004, in violation of Maintenance of Way Operating Rules 1.6 and 1.25, and the Visa Procurement Card Policy.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service, remove any mention of this incident from his personal record, and make him whole for all wages beginning March 31, 2004.

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.

On July 8, 2004, the Carrier wrote Claimant advising him that an investigation was set to determine his responsibility, if any, concerning:

"...your falsification of documents and information regarding purchases made with your corporate procurement card...on October 1, 2003, October 27, 2003, May 4, 2004 and June 14, 2004...."

He was also advised he was being withheld from service pending the outcome of

the investigation.

The investigation was held as scheduled and the Carrier in the belief it had furnished sufficient evidence of Claimant's culpability for the charges assessed, advised Claimant on August 6, 2004, that he was dismissed from Carrier's service.

The investigation into those purchases occurred because Claimant and a clerk got into an argument concerning Claimant's request to alter the bill to show he purchased grease and a pair of slip-joint pliers in lieu of listing two jumper cables.

The clerk, either bothered by the exchange of words or really thinking something else was amiss, copied the license plate number and the company truck number that Claimant was driving, then the clerk called the Carrier headquarters relaying what had transpired.

A Carrier Security Officer was assigned to investigate and went to the store, interviewed two clerks who then furnished three other instances of Claimant making the purchases wherein he had the clerk who waited on him on June 4, 2004, change the billing to reflect purchases other than what had actually been purchased.

On May 4, 2004, Claimant's handwritten bill reflected he purchased four gear lube when in fact he purchased four hand tools. On October 27, 2003, he purchased one hand tool, but had the receipt read "bolts". On October 1, 2003, Claimant purchased three hand tools, but had the written receipt list a file, some anti-freeze and a rust inhibitor.

When the Carrier security person questioned Claimant about the purchases of June 4, 2004, Claimant opened his tool box and showed him the two jumper cables in their original packages and the slip joint pliers.

All purchases with the company credit card have to be reported to the Supervisor. Several days after the June 4, 2004, incident, Claimant advised the Supervisor via email that the purchase was for, "oil, gear lube and pliers."

When asked why the invoice reflected two jumper cables and pliers when his email listed oil and gear lube but no jumper cables, Claimant replied the only reason he could think of that he may have listed in a previous email and that he apparently copied the older report without thinking.

At this juncture, the record does raise questions as to what was the reason Claimant sought handwritten receipts that did not reveal the true purchases in each instance. Did he list items erroneously believing, as he told the clerk, that it was for budget reasons or were the purchases for his own private use? Were the emails simply copied from previous reports because he was inept or lazy at typing in the actual purchases?

To dismiss an employee with 34 years of service with only one prior incident on his record, the evidence has to be incontrovertible. The June 4, 2004, incident developed only that he did furnish an email to his Supervisor that didn't coincide with the actual purchase, but Claimant did have in his company tool box the two jumper cables he did not list on his email to verify the June 4, 2004 purchase.

The earlier incidents concerning actual purchases and conflicting handwritten receipts, shows only that Claimant was rather haphazard in reporting what he had actually purchased.

Claimant's Supervisor stated what Claimant actually purchased in each incident were tools that he needed to keep his tool box current. In other words, the Supervisor

readily agreed that the tools, etc., that Claimant purchased would be tools he would be expected to purchase.

This Board is not convinced, or at least can find no evidence, that what Claimant purchased were items for his personal use, but this Board readily believes that Claimant's out of service time rest solely on his shoulders for not being candid for what he did purchase. Is there suspicion that Claimant's use of the company credit was fraudulent? The answer is yes; but is there proof of such fraudulent use, no.

Claimant is to be reinstated to service with all his seniority rights intact, but due to his false reporting intentionally or otherwise that has lead to this incident, there will be no pay for time lost.

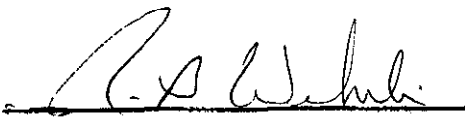
AWARD

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 ate the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


William L. Yeck, Carrier Member

Dated: February 27, 2005