

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 271**

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 January 3, 2005, when it Dismissed the Claimant, Mr. T. E. Muhr, from service for failing to report for duty and falsification of payroll records on October 12, and 13, 2004, in violation of Rules 1.6 and 1.5 of the Maintenance of Way Operating Rules.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately restore the Claimant to service, remove any mention of this incident from his personal record, and make him whole for all wages.**

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 October 29, 2004, the Carrier wrote Claimant, certified mail, return receipt requested, the following which is quoted in part:

"Attend formal investigation...on Friday, November 5, 2004, at 2:00 PM, with your representative and witness(es), if desired, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.6 and 1.15 of the Maintenance of Way Operating Rules...concerning your alleged failure to report for duty on October 12 and 13, 2004, and your alleged falsification of payroll records on October 12 and 13, 2004, while employed as a Grapple Truck Driver on the

Southwest Division.

You will remain withheld from service pending results of this investigation."

The Investigation was postponed until December 7, 2004, in a November 8, 2004, letter directed to Claimant, again sent certified, return receipt requested.

On December 7, the Investigation was convened with the Carrier representatives and the Organization's Representative, but without Claimant.

The Representative testified he had attempted more than once to contact Claimant and even searched the premises for Claimant, all without success.

The Representative compared signatures on the two return receipts for the certified letters sent Claimant and was satisfied the signatures on both receipts were identical.

To this Board, it is clear that Claimant was fully aware of the time, date and place of the Investigation but chose to be absent.

Claimant does have the right to avoid the Investigation if he chooses, but such avoidance leaves standing all facts relating to the charges as presented by Carrier witnesses.

The Board thus finds that the Carrier has furnished sufficient evidence that established Claimant's culpability for the charges assessed. The discipline of dismissal will not be disturbed.

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
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli
Rick B. Wehrli, Labor Member

William L. Yeck
William L. Yeck, Carrier Member

Dated:

June 30, 2005