

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 289**

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 August 25, 2005 when it dismissed Claimant, C. D. Rael for alleged violation of Maintenance of Way Operating Rules 1.6-Conduct for falsification of time for May 6, 2005.**
- 2. As a consequence of the violation referred to in parts 1, the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights restored, remove any mention of this incident from his personal record, and make him whole for all time lost account of this incident.**

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.

May 6, 2005, was a tumultuous day for Claimant. He became involved in a dispute involving his mother, his ex-wife and her boyfriend.

The details of that encounter, the outcome and why so much detail concerning a family matter has become a matter of public record can be found in Award 358 of Public Law Board 4244. The details of that incident will not, therefore, be repeated herein.

This particular case involves the alleged fraudulent input of a full day's pay and a

request for per diem when Claimant left the work site at 10:00 AM on May 6, 2005, for which he was paid. When Carrier discovered he had claimed a full day's pay and per diem for May 6, they wrote Claimant establishing an investigation to:

"...develop the facts and place responsibility, if any, in connection with possible violation of Rule 1.6, of Maintenance of Way Operating Rules, in effect October 31, 2004, as supplemented or amended, concerning a report received June 17, 2005 concerning your alleged dishonesty when claiming 8 hours regular time pay and lunch per diem on May 6, 2005, while incarcerated while assigned as Lead Welder, Dalles, New Mexico."

The investigation was mutually postponed and was finally held on August 11, 2005. On August 25, 2005, the Carrier wrote Claimant advising that he was dismissed from service.

In reviewing the transcript, Claimant admitted he claimed the time he is now accused of fraudulently claiming and receiving pay and expenses for time he did not work on May 6. Following is an excerpt from the investigation:

- "81. Q. Mr. Rael, what were your duties to be that day?
A. To weld on a frog at Isleta on the Glorieta Sub.
82. Q. Did you do that?
A. No, I got arrested and I called from jail, had a piss test in jail, and when I got out I went back to the office to see if he still wanted me to go work on that frog and he said no go home. And had Gary Gomez watch me clean out my truck. And that was it, gone.
83. Q. Mr. Rael, whose responsibility for inputting your time?
A. Me and my partner.
84. Q. And your partner being who?
A. He was Rivas that day.
85. Q. Has Mr. Rivas ever inputted time for you before?
A. I showed him how, taught him, yes.
86. Q. Mr. Rael, did you input your time for May 6, 2005?
A. Yes, in the morning before anything happened. I didn't get a

chance to go back and delete anything because I was told to leave by Sloggett.

87. Q. Mr. Rael, when did you return back to the property to start work again?
A. The following Friday. This happened on Friday, May 6, and I came back the following Friday, a week later. I didn't get paid for any of those days.
88. Q. Mr. Rael, you did pay yourself for eight hours for May 6 and for meal allowance?
A. Yes, in the morning before anything happened it did, yeah."

Further questioning of Claimant reveals that although he forgot about claiming the May 6 full pay and a per diem or lunch allowance, he first argued that he was suspended from service immediately by the Division Engineer thus he had no access to the computer to change the time he had claimed on the morning of May 6. When questioned further, he admitted he was reinstated on the 13th and could have then adjusted the payroll claiming time only until 10:00 AM, but he contends he forgot about changing the time.

Maybe, just maybe, Claimant did forget. He could not adjust the payroll after the pay period closed, but he could have called the Payroll Department or his Supervisor to find out how he could readjust the hours he actually worked on May 6, 2005. Barring all the missed opportunities to correct his payroll, when he received pay for days worked for the first half of May, he must have noticed he was paid for more time than he actually worked. If he did not, he must be one of the rare employees who never knew how much the next check was for.

The Board has empathy with Claimant's disturbing, highly-emotional family situation, but by months end or whenever the pay check arrived covering services rendered in the first half of May, he should have recognized he was overpaid. He could

have then contacted the right people to readjust his payroll reflecting only the hours worked during May 6, 2005, but he did not.

Claiming money for time worked when an individual did not work is fraud and is a very serious offense. Dismissal is not out of line. The Board does support the Carrier's decision to dismiss.

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


David D. Tanner, Labor Member


Samantha Rogers, Carrier Member

Dated: 10/18/06