

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 291**

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 February 1, 2006 when it dismissed Claimant, E. Bahe, for alleged violation of Maintenance of Way Operating Rule 1.6-Conduct when claimant paid himself for overtime not worked on October 20, 2005.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from his personal record, and make him whole for all time lost commencing February 1, 2006.

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 December 22, 2005, the Carrier wrote Claimant that an Investigation Hearing was being convened:

"...to develop the facts and place responsibility, if any, in connection with possible violation of Rule 1.6 of the Maintenance of Way Operating Rules, effective October 31, 2004, as supplemented or amended, concerning report received December 11, 2005 alleging falsification of payroll records on October 20, 2005, and allegedly claiming overtime hours not worked, while employed as Foreman on Surfacing Gang TSCX0551 headquartered in Flagstaff, AZ.

In connection with this alleged violation, you are ineligible for alternative handling under Part 2, Section 1, Paragraph D, Subsection E of the Safety Summit Agreement."

On February 1, 2006, Carrier wrote Claimant advising him he was dismissed from Carrier's service.

A review of the transcript finds Carrier's dismissal of Claimant for submitting fraudulent time, time he was not entitled to, has been clearly established by Claimant admitting claiming four hours at the overtime rate that he did not work.

Not only did he admit the false payroll for four hours at the overtime rate, he also wrote a statement indicating he requested pay for time not worked. His response as to why he replied - he was confused.

This Board realizes that Claimant at the date of the investigation was a veteran of 31 years; however, even a lily-white discipline record (which is not the case here) is not a mitigating factor. Payroll falsification, i.e., claiming time not worked, is theft, pure and simple and an act of dishonesty.

With Claimant's oral and written testimony admitting the falsification of the payroll for October 20, 2005, the Carrier has furnished sufficient evidence of Claimant's culpability for the charges assessed. Dismissal is appropriate for theft.

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

David D. Tanner

David D. Tanner, Labor Member

Samantha Rogers

Samantha Rogers, Carrier Member

Dated: 11/29/06