

PUBLIC LAW BOARD NO. 5850

Award No.  
Case No. 304

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad (Former  
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant, V. M. Castro, was withheld from service on March 27, 2006 and dismissed on May 15, 2006 for a violation of Maintenance of Way Operating Rule 1.6- Conduct when he falsified his payroll on dates of February 23, March 9, and March 13, 2006; and
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 Claimant's personal record, and make Claimant whole for all time lost commencing March 27, 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 March 27, 2006, Carrier wrote Claimant advising an investigation was being convened to:

"...ascertain the facts, and determine your responsibility. If any with your alleged failure of Maintenance of Way Operating Rule 1.6 (Dishonest and Immoral) effective October 31, 2004. While assigned as a Welder on gang (TRWX 0903), you allegedly submitted time and paid yourself for three days, February 23, 2006, March 9, 2006 and March 13, 2006. When in fact

you were allegedly not present at work on those days."

A review of the transcript reveals Claimant had alibis for March 9 and March 13, 2006, but no alibi for February 13, 2006. Claimant stated in the investigation transcript:

"DAN S. GUILLEN: Were you AWOL on February the 23<sup>rd</sup>, 2006?

VINCENT M. CASTRO III: I was out sick. I remember him, leaving him that voicemail, yes.

DAN S. GUILLEN: So you called off sick and left him a VMS?

VINCENT M. CASTRO III: Yes.

DAN S. GUILLEN: Voicemail system message? Did you pay yourself for February 23<sup>rd</sup>?

VINCENT M. CASTRO III: From I know now, yes, I believe I did.

DAN S. GUILLEN: Is there any reason for paying yourself for being off?

VINCENT M. CASTRO III: No, I.

DAN S. GUILLEN: Excuse me, was there any reason for paying yourself for February 23<sup>rd</sup> that you're aware of?

VINCENT M. CASTRO III: That I'm aware of, no."

The Carrier's obligation in discipline cases is to furnish sufficient evidence to support the charge. There is no better evidence than Claimant, himself, admitting he claimed time when he was off sick on February 23.

Theft of time or claiming pay for time not worked is fraud; actually it is theft. Such action by an employee is serious and regardless of the Claimant's record, it cannot be tolerated by the Carrier.

There is no need to discuss the time claimed for March 9 and 13. It is enough to know that Claimant admitted fraudulently claiming time on February 23, 2006, when he

had marked off sick with his Supervisor.

The decision to discipline Claimant for such dishonesty calls for the ultimate in discipline - dismissal.

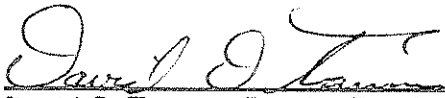
AWARD


Claim dismissed.

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, For the Employees  
Dated: November 9, 2007

  
Samantha Rogers, For the Carrier