

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 305**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(Los Angeles Junction Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant, I. Hayes, was dismissed on June 20, 2006 for a violation of Rules 39, 41, 42, and 56 when Claimant cashed both his regular LH April 2006 paycheck he claimed he had not received and the replacement paycheck; 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 June 20, 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.

Pursuant to California statutes, employees paid twice a month must have the checks by the 10th and 25th of the month.

The Burlington Northern Santa Fe Railroad handles the payroll for the Los Angeles Junction Railroad. They strive to have the checks due on the 10th in the mail by the 5th. In many instances, the checks will be cashed on the 9th at most institutions other

than a bank. Claimant complained on the 10th that he had not received his check. He was told he had to wait 24 hours, and then if no check is received to call in. He contacted payroll on the 12th about no check. The BNSF Payroll Department stated Claimant called in too late to process a duplicate check. Thus, on the 15th the make-up check was overnighted for receipt on the 16th. BNSF put a stop payment on the original check. The Carrier's bank called BNSF payroll and stated someone was trying to cash the original check.

Apparently, the stop order did not get through as the Carrier received both checks, and they were both apparently signed by Claimant. The original check was cashed on the 9th at a liquor store and the make-up check was cashed at a bank on the 17th.

The liquor store had video tapes, although somewhat outdated. The owner had to review all the tapes, found the pictures he was looking for and printed same from the video tapes. Being an older video, the pictures were somewhat grainy. The Carrier then instructed someone from Junction Railroad to go view the tapes. This was done. The actual videos were much clearer than the grainy reprints. The liquor store owner and the Junction Railroad employee both identified Claimant, as did Claimant himself when questioned by a company policeman.

The video clearly shows Claimant cashing a check on the 9th, a check he swore he never received.

The Carrier convened an investigation:

"...to ascertain the facts and determine your responsibility, if any, regarding the request under false pretense for a replacement payroll check dated May 15, 2006, for payroll check dated May 10, 2006 for pay period,

last half April, which was cashed at Gee Gee's Liquor on May 9, 2006."

Following the investigation, the Carrier dismissed Claimant.

This Board concurs with the Carrier's decision to dismiss. There exists sufficient evidence of Claimant cashing the original check on the 9th, a check he claims he never received. In fact, Claimant identified himself in a print of the store's security videos. The original check was available to cash on the 9th, whereas the make-up check was not issued until the 15th of the month.

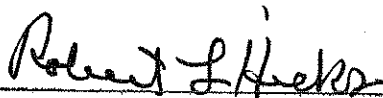
Fraud - theft of money, material, gear or anything not belonging to the Claimant but to the Carrier, is not tolerated and regardless of the individual's record, even with several letters of accommodation, dismissal is appropriate.

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, For the Employees



Samantha Rogers, For the Carrier

Dated: March 10, 2008