

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 332**

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 commencing January 28, 2008 when Claimant, R.R. Whatley (1579085) was dismissed for allegedly falsifying records on track inspection reports, forging FRA documents on January 27, 2008 violating Rules 1.4, 1.6, 1.13 and 1.14 of Maintenance of Way Operating Rules and Rules 7.07, 233.03 and 233.08 of the CFR, part 213, and;**
- 2. As a consequence of the violation referred to in part 1 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing January 28, 2008, and remove any mention of discipline from their records.**

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.

The Carrier wrote Claimant on January 31, 2008, advising an investigation was being convened:

"...to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.4, 1.6, 1.13, 1.14, and 1.15 of the Maintenance of Way Operating Rules, in effect October 31, 2004, and Rules 7.07, 233.03 and 233.08 of the 48 CFR part 213, in effect October 31, 2006, as supplemented or amended, concerning your alleged falsifying records on track inspections, alleged falsification of time not worked and allegedly

forging FRA documents on Sunday, January 27, 2008, at approximately 12:37 PM, while working as a track supervisor on the El Paso Subdivision.

In connection with this alleged violation you are ineligible for alternative handling under Part 2, Section 1D(e) of the Safety Summit Agreement dated November 26, 2005.

You are withheld from service pending results of formal investigation."

On March 26, 2008, the Carrier advised Claimant he was being dismissed for, "falsifying records on track inspections and forging FRA documents on Sunday, January 27, 2008."

Claimant was appointed to a Track Supervisor's position. His responsibility was to inspect track within a specified territory. By Agreement, Track Supervisor's do not have assigned workdays nor assigned hours. They must, therefore, be self-starters who work without supervision in inspecting the track assigned to them.

The Carrier trusts the Track Supervisors to go about their duties. The paperwork relating to what was inspected and whether the inspection was by high-rail or by walking the track is for the FRA.

Claimant was assigned to start and end his day at the Belen, New Mexico depot and that was where Claimant left his high-rail truck. Another Track Supervisor also started and ended his day at the same Belen Depot. At 2020 hours on January 27, 2008, that Supervisor faxed to the Roadmaster in charge the following:

"On Sunday the 27, 2008, I arrived at the Belen Depot to brief myself on form b, general orders, the usual things needed done before starting that morning. I notice as I left the depot that morning that the Socorro track sup truck was park out in the parting lot, and thought nothing much on it. I left towards the yard, madrone bodega and beavers to look at some critical joints that at one point or another they have pulled apart, and also because the dispatcher had said after talking to him, that there would not be any track and time that morning, he said try at noon. At about 1000 hrs I

arrived back to the depo (sic), and still notice the Socorro track sup truck was still park in the parking lot. I did not stay long at belen and proceeded to go back to the field, after a short wait I got track and time and made a hyrail inspection from beavers to el paso jct. At about 1300 hrs I arrived to belen depo (sic) to take care paper work, and still notice that the Socorro track sup truck had not been moved, so I decided to call the el paso road master to let him know what was going on. Twenty minutes later I saw track supervisor whatley drive in the parking lot on his personal vehicle and proceeded to go to where the co truck was park, and he got it started, he move the co truck from where it was park over to the fence by the Harvey house, when he came inside the depot. I ask him 'running a little late' replied no that he was just coming in from making his hyrail run, I ask him 'so how was it', he said it was quiet out there. I called the Roadmaster a second time to let him know what whatley had told me, and that was all, this statement is true and written to the best of my knowledge, thank you."

With the aforequoted email, the Roadmaster in charge called Claimant to find out the particulars. Claimant told him he high-railed his territory and the FRA form was so marked.

The Roadmaster called the Dispatcher's office just to check Claimant's story as it would be necessary that he have a track warrant to protect himself. There was no record of any Dispatcher on January 27, 2008, issuing Claimant a track warrant. When confronted with that fact, he then said he used his own vehicle, but the Roadmaster knew that there was no way he could inspect the 108 mile territory as there was no parallel road in much of the area. Claimant then told the Roadmaster that he had misplaced the truck key but had been too embarrassed to tell anyone. He only inspected two sidings using his own vehicle.

As the questions kept coming, Claimant came up with excuse after excuse as to what work he supposedly did on January 27, 2008.

When asked why he did not correctly fill out the FRA report, his response was that he was told to fill it out the way he did, indicating he inspected by high-rail, then he

finally stated he performed a walking inspection of two sidings using his own truck to reach the sidings.

In fact, when reviewing the transcript, this Board found that whatever his excuse was, when it was shown to him that it could not have been done, he had another version of what transpired.

If he used his own vehicle in company business, no expense for miles driven was filed by Claimant.

It is to be noted that the charge letter contained an alleged falsification of time not worked, but the dismissal letter had not listed the falsification for filing for pay when no work was performed had been dropped, but the remaining charges had been sustained.

The charges for which Claimant was terminated are serious infractions of the Rules. The Board will leave the termination stand.

AWARD

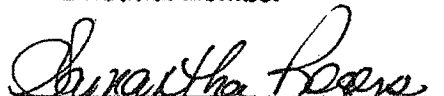
Claim denied.

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: 10/16/08