

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 42

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

1. That the Carrier's decision to remove Eastern Region, Section Foremen Mario C. Lopez from service was unjust.
2. That the Carrier now reinstate Claimant Lopez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 10:30 a.m., April 29, 1997 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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.

Claimant was cited for dishonesty and falsification of payroll, and following an Investigation was dismissed from Carrier's service

The circumstances leading to the Investigation are that Claimant and three others car pooled and on their way to work on March 31, 1997, the car engine blew up, leaving the four stranded until an alternative means of transportation was found. As a result, Claimant and the other three car-

poolers were one hour late to work on March 31, 1997

Claimant, who inputs his own time as well as the time worked by his gang, claimed a full eight hour workday, whereas the other three claimed only the seven hours actually worked. For this act, the Carrier issued the charge letter and then dismissed Claimant.

The falsification of payroll is a serious charge leading to long supervision or outright dismissal. Usually the falsification is repetitious and involves much more than one hour on one day.

To this Board, it appears that Claimant was simply careless with the input of his time in this one instance. The Carrier did not establish any other days or dates or instances of falsification, only this one incident. Even Carrier's witness admitted that Claimant's act of claiming a full eight hours when he worked only seven could readily have been an honest mistake.

Under the circumstances, Claimant's action on March 31 was much less severe than the charges would indicate. Claimant's Supervisor knew about the over claim on April 4, but did not advise Claimant of his knowledge until April 9, nor was Claimant given an opportunity to correct the payroll as was done in another case.

The Board does find Claimant did claim the one hour overtime on March 31 when he worked only seven hours, but it can find no evidence of Claimant's intent to defraud the Carrier for his own gratification. He was, however, careless in reporting his time


Under the circumstances, Claimant is reinstated to service with all his seniority intact, but without pay for time lost.

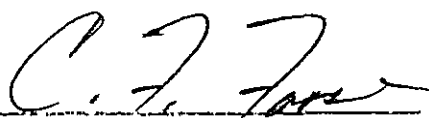
AWARD

Claim sustained in accordance with the Findings

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted


Robert L. Hicks, Chairman & Neutral Member


C. F. Foote, Labor Member


Greg Griffin, Carrier Member

Dated June 9, 1997