

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 4

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(Burlington Northern Santa Fe Railway (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on March 20, 1996, the Carrier dismissed Mr. M. J. Naylor for allegedly falsifying payroll records.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record.

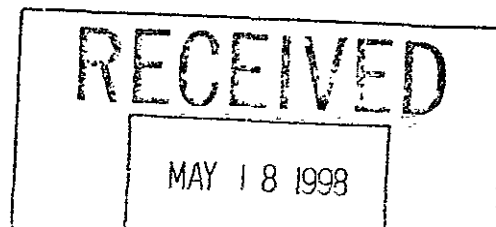
FINDINGS

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, as a Welder Laborer on a "pot welding gang," which was working four ten hour days, was responsible for preparing the payroll for the gang. The gang worked Monday, December 18, 1995, through Thursday, December 21, 1995.

Claimant stated, without rebuttal, that in order to get the holiday pay, the 10 hour days had to be reported as five eight hour days. In preparing the payroll for employee Hendersen, he made an error on the column for December 22, and he simply blacked out the square and in lieu, claimed eight hours for December 26, 1995. Employee Hendersen was paid for the Christmas holidays, plus for service allegedly rendered on December 26, 1995.

In March, the Roadmaster heard employee Hendersen was in jail and in verifying the rumor, discovered Hendersen had been incarcerated since December 23, 1995. In checking the payroll, he further found that Claimant had requested in Hendersen's behalf eight hours pay for December 26, 1995.



Claimant, because he had completed the payroll, was suspended from service effective March 20, 1996. The investigation was held on June 12, 1996, and Carrier did reaffirm that the suspension was permanent for falsifying the payroll.

From first blush, falsification of a payroll is an act of fraud and if substantial evidence is adduced at the investigation, the discipline is usually severe regardless of the individual's work record. Furthermore, the charged employee is usually the beneficiary of the fraud.

In this instance, however, the Board finds the label of falsification of payroll is a misnomer. A more apt charge, if indeed one is warranted, would perhaps have been improper preparation of a payroll.

Claimant, as stated above, completed Hendersen's payroll, knowingly claiming time in his behalf for December 26, 1995, but, as stated, he did so because for the date of December 22, 1995, he had erred in entering Hendersen's time and simply blacked out the erroneous entry and entered the time for December 26, 1995. Hendersen worked 40 hours in the week preceding the holidays and with the entries made by Claimant, he was not overpaid for services rendered. Apparently, Claimant also entered on Hendersen's payroll, holiday pay for December 24 and 25.

Holiday pay qualifications sometimes become rather complex, and numerous Section 3 Committees have had to resolve holiday pay qualifications that the parties could not resolve.

In this instance, a Carrier official, the Roadmaster, signed the payroll as approving the time requested. When queried, the Roadmaster stated he had to accept the payroll as prepared as he did not have personal knowledge of who was working and how long each may have worked, but the Board is of the opinion that when it comes to the holidays, the approving official should scrutinize the payroll a little closer.

Surely, when a payroll shows a blacked out box on December 22, that should at least be cause for an inquiry

If Hendersen did not work on the last work day preceding the holiday, he would not be entitled to holiday pay. Obviously, the intended checks and balances did not work in this instance, but because it did not work, Claimant should not have been made the scapegoat.

Claimant admittedly requested 8 hours pay for Hendersen on December 26, 1995, when he had no idea of his whereabouts on that day. This is not correct, but then if what Claimant stated was true, that when requesting holiday pay on the payroll forms you have to show the employee working five eight hour days as opposed to four ten hour days, is not the Carrier asking payroll preparers to make fraudulent entries?

Under the circumstances, the discipline is reduced to a record entry and that entry should read improper payroll preparations in lieu of the falsification of the payroll. Claimant, who has been reinstated to service without prejudice to his pursuit of this claim, is to be paid for all time lost in accordance with the practice on the property.

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 postmark date the Award is transmitted to the parties.



Robert L. Hicks, Neutral Member & Chairman
Public Law Board 6103

Dated: