

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD 6302**

**NMB NO. 184**

**AWARD NO. 184**

**PARTIES TO DISPUTE**

**CARRIER**

Union Pacific Railroad

**Carrier's File**

1525622

AND

**ORGANIZATION**

Brotherhood of Maintenance of Way Employees  
Division of International Brotherhood of Teamsters

**System File**

C-0948U-156

**STATEMENT OF CLAIM**

1. The dismissal of Section Foreman W. Mathews for his alleged violation of Rule 1.6 (Conduct-Dishonest) in connection with . . . charges that while you were employed as Section Foreman M/L, on Gang 7805, at Yermo, California, on August 7, 2009, you reported time worked for which you did not perform service. Additionally, you were dishonest when you were subsequently questioned regarding the recording of such time. [The discipline assessed] was arbitrary, excessive, on the basis of unproven charges and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Section Foreman W. Mathews shall be reinstated to service with . . . all of his Maintenance of Way and Structures Department seniorities restored unimpaired, his vacation rights restored unimpaired, all other Railway Labor Act employment rights restored unimpaired as well as hourly compensation for all hours he has been denied since being removed from service until he is returned to service.

**STATEMENT OF BACKGROUND**

At the time the events occurred that eventually led to Claimant's dismissal from service, Claimant had established and held seniority as a Section Foreman within the Track Sub-department and had over eleven (11) years of service with a blemish free work record. During the 2009 calendar year, Claimant was entitled to time off from work consisting of three (3) weeks of vacation and one (1) personal day. The record evidence reflects that he took a one week (1) vacation, that is, five (5) consecutive days in the week of August 3 through August 7, 2009. Claimant returned to work on Monday, August 10<sup>th</sup> and worked the entire week which ended on Friday, August 14, 2009. In accord with his responsibility to input his timeroll for pay for the first half of the month of August, which he related he did on the following Monday, August 17, 2009, Claimant discovered that while he had taken five (5) days of vacation the first week of August, he had only three (3) days of vacation time left for the year. As a result, he indicated on his timeroll report using his remaining three (3) days of vacation, applying the applicable three (3) digit vacation code of 002, for August 3, 4, and 5, 2009 and indicated by use of another but proper code, taking August 6<sup>th</sup> as his one (1) allotted personal day. However, when he had to account for August 7, 2009, he used the improper three (3) digit code of 001, indicating he had worked that day and was entitled to receive eight (8) hours of straight-time pay. In retrospect, Claimant indicated that the proper code to have been attributed to August 7, 2009, was 902, signifying a temporary absence from work.

Manager of Track Maintenance, Jeff Poppe related that on Monday, August 17, 2009 he contacted Claimant to inquire about his having indicated on his timeroll report that he worked on August 7, 2009. Poppe further related he contacted Claimant with regard to this date as he recalled Claimant had informed him prior to the week of August 3 through August 7, 2009 that he was going to take that week as a week of vacation time. Poppe explained that in accord with normal operating procedure, whenever he becomes aware of any discrepancy in a timeroll report, he contacts the employee in question in order to afford the employee an opportunity to explain the discrepancy and then to make a change in the report should the explanation reveal the employee made a mistake on the timeroll report. Poppe related that when he spoke with Claimant on August 17<sup>th</sup> about his having indicated on his timeroll report that he had worked on August 7<sup>th</sup>, Claimant explained that since he did not have enough vacation time left to cover his last day of vacation, he returned to work on the 7<sup>th</sup> and worked that day. Based upon Claimant's explanation, Poppe related he then approved Claimant's timeroll explaining that once he gives such approval, no employee can get into the system to change their time. Poppe related that subsequent to approving Claimant's timeroll for the first half of August, 2009, he then investigated Claimant's account he had worked on the 7<sup>th</sup> of August and was able to determine that Claimant had, in fact, not worked that

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day. According to Poppe, he then took Claimant out of service on August 21, 2009 pending formal investigation. Poppe related that at the time he took Claimant out of service, Claimant told him he had tried to correct his having claimed pay for time not worked on August 7, 2009 but since he was unable to make the change, he indicated on the timeroll covering the last half of August, 2009 he had not worked Monday, August 17<sup>th</sup> when he had actually worked that day, maintaining that in so doing, he had balanced out the pay he received for August 7, 2009.

Poppe explained that when an employee inputs the codes into the GMS System, it will not allow an employee to indicate vacation time for days when one's vacation time has been totally utilized and the same applies to personal days. Thus, had Claimant attempted to indicate August 7<sup>th</sup> as vacation time, the computer system would not have allowed him to do that as his last vacation day had been allocated to Wednesday, August 5, 2009. Thus, Claimant knew at the time he inputted his timeroll for the first half of August, that the computer system would not accept the vacation code to be attributed to Friday, August 7<sup>th</sup>.

During the Formal Investigation which was held September 16, 2009, Claimant submitted the following handwritten statement:

**I am guilty of violation of Rule 1.6 (4), but not intentional . . . I made a mistake on the date when putting my time in . . . I received a call from MTM Jeff Poppe on Monday, August 17<sup>th</sup>, 2009, informing me that my time on August 7<sup>th</sup>, 2009 was questionable.**

**I corrected it, but I put in the wrong date, August 17<sup>th</sup>, 2009, instead of August 7<sup>th</sup>, and later I realized that I put in the wrong date and time . . . time had already been approved and I was unable to change it.**

**I take full responsibility for this blunder . . . it is and always has been my intent never to be dishonest about my work habits or hours in question.**

**The Union Pacific Railroad is a good company to work for . . . and I believe I have been a good employee to this Company and will continue to do so if allowed with the utmost integrity and honesty. I give my pledge and commitment that this will never, never, never happen again . . .**

**PARTIES' POSITIONS**

In sum, the Organization argues that Claimant made an honest mistake in designating August 7, 2009 for timeroll purposes as a day he worked and was entitled to be compensated eight (8) hours of straight-time pay.

In sum, Carrier asserts, notwithstanding Claimant's account his claiming pay for a day not worked was not intentional, that it proved by substantial evidence, Claimant's intent was to deceive it as Claimant came to discover he was short two (2) days of vacation time to cover the full five (5) days of the vacation week he had taken when, in inputting the pay information into the computer system, the computer system would not allow him to allocate a vacation day for August 7, 2009, and, moreover, the computer would not allow him to attribute an additional personal day to cover for August 7, 2009. Claimant then consciously made the decision to attribute August 7<sup>th</sup> as a day worked when he knew he had not worked that day and was still on vacation. When Claimant had the opportunity afforded him when MTM Poppe called him on August 17<sup>th</sup> to provide an explanation as to his having indicated he worked on August 7<sup>th</sup>, to come clean and admit he had made a mistake in reporting his time, he instead held fast and told Poppe the lie that he had, in fact, worked that day.

Carrier maintains that in light of Claimant's admission against interest at the formal hearing that he, in fact, had violated GCOR Rule 1.6 (4), the disciplinary assessment of dismissal was both proper and commensurate with the admitted offense committed.

**FINDINGS**

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.


Upon a thorough review of the record evidence, the Board fully concurs in the Carrier's position in its entirety and has nothing more to add. We find the record evidence establishes without doubt that even if Claimant's initial intent was not to deceive Carrier by claiming a day's pay for time not worked, he committed an act of deception by willfully failing to correct the situation when afforded the opportunity to do so when MTM Poppe contacted him for an explanation as to his having indicated on the timeroll that he worked on August 7, 2009. Accordingly, we rule to deny the subject claim in its entirety

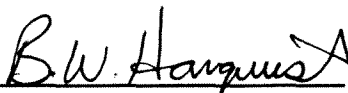
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Claim Denied

  
George Edward Larney  
Neutral Member & Chairman

  
B. W. Hanquist  
Carrier Member

  
T. W. Kreke  
Employee Member

Chicago, Illinois

Date: Nov 19, 2010