

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 7048

BNSF RAILWAY COMPANY

(Former ATSF Railway Co.)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case No. 16

NMB Case No. 106

Carrier File No. 14-08-0052

Organization File No. 40-13D2-072.CLM

Claimant: Manuel Rodriguez

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing December 11, 2007 when Claimant, Manuel Rodriguez (6497945), was assessed a Level S 10-day Record Suspension for falsification of time from October 1, 2007 through October 3, 2007 violating Rule 1.13- Reporting and Complying with Instructions of the Maintenance of way Operating Rules; and
2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate the Claimant with all seniority, vacation, all rights unimpaired and pay for all wage loss commencing December 11, 2007, continuing forward and/or otherwise made whole.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

The Claimant, Manuel Rodriguez, is employed as a Foreman in the Kansas Division. He was assessed a Level S 10-day suspension for alleged falsification of time regarding two shifts on October 2 and October 3, 2007. According to the Carrier, the Claimant submitted payroll documents to pay his crew of overtime from 2:00 a.m. through 6:00 a.m. on October 2, 2007 after an Assistant Roadmaster for the Kansas Division had instructed the Claimant to discontinue operations and from the work site depart with his crew because the rail grinder train they were assigned to support would not be operating that night. The Claimant elected to rely on the twelve hour assignment from 6:00 p.m. to 6:00 a.m. previously given by the Roadmaster for the Kansas Division, to whom the Claimant reported and who had originally conveyed this assignment to the Claimant.

The Claimant made a payroll entry at or about 2:00 a.m., the time he was told to desist from work by the Assistant Roadmaster, that carried the crew on overtime through 6:00 a.m. The Claimant contends that his crew cleaned their truck and performed other useful work as well as taking the breakfast meal break to which they were contractually entitled. The Claimant contends that he and his crew were properly

paid, as they had actually worked all hours for which they were paid, including their paid meal break and travel time to their reporting location.

The Carrier characterized the Claimant's conduct as falsification of time in violation of Maintenance of Way Rule 1.6-Conduct and Rule 1.1.3-Reporting and Complying with Instructions by submitting time documents that demonstrate that the Claimant continued to work beyond the time he had been told to leave the area where he and his crew were waiting for the rail train.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was submitted to Public Law Board 7048 for adjudication.

Findings and Decision

The Public Law Board No. 7048 (the Board) finds that the parties herein are Carrier and Employee Organization within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and subject matter involved.

The Claimant contends that he was confronted with conflicting instructions issued by his Roadmaster and then apparently modified by an Assistant Roadmaster. The Claimant testified at the investigatory hearing that he elected not to contact the Roadmaster in the middle of the night for clarification and further elected to persist in complying with the directive issued by the higher ranking Carrier official, which directive coincidentally involved four hours of overtime premium pay because it was a twelve hour assignment. The Assistant Roadmaster testified that he personally told the Claimant face to face about 2:00 to "tie up" and cease work. According to the testimony, the Claimant entered his time in the PARS system at 4:10 a.m., but paid himself until 6:00 a.m. Nothing in the record demonstrates persuasively that the Claimant and his crew were not at work for all hours for which they were paid on October 3, 2007, but the Carrier contends that the Claimant improperly applied for and received double time premium on October 3, 2007.

The Claimant contends that he reasonably believed that he had been assigned by Roadmaster Schurman to work from 6 a.m. to 6 p.m. on October 2-3, 2007. This testimony was contradicted by Roadmaster Schurman's testimony. On the other hand, the Claimant was advised by the Assistant Roadmaster that the rail grinder train that the Claimant and his crew were assigned to support would not be returning to that site by 6:00 a.m. The Claimant and his crew had reported to work the prior

day as assigned and been sent home early in order to rest and to report at 6:00 p.m. for the twelve hour shift. A member of the Claimant's crew had traveled a substantial distance from Nebraska to report for duty. Thus, the Carrier had probable cause to suspect the Claimant's motives for remaining on duty the next day long enough to reap the overtime the crew had initially been assigned.

The Claimant testified that he and his crew were entitled to their meal break and to clean their vehicles to be ready for the next day's work. This assertion may be valid, but the Claimant's testimony was unable to overcome the testimony by Roadmaster Schurman that he personally told the Claimant to discontinue work around 2:00 a.m. The Roadmaster did not testify that he unequivocally directed the Claimant to take his crew immediately back to the barn, or reporting site.

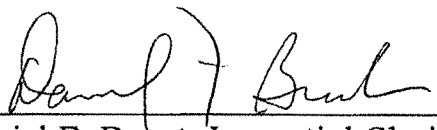
The Roadmaster acknowledged that travel time and paperwork could justify working until 3:00 a.m. and the Claimant testified persuasively that a meal break could legitimately extend this interval. Thus, by remaining at work past 4:10 a.m. the Claimant unjustifiably extended his work day beyond the scope of his Roadmaster's instructions. The Roadmaster acknowledged in his testimony that he had not queried the Claimant about his activities between 4:10 a.m. and 6:00 a.m. Nevertheless, regardless of whether a the Claimant was

originally assigned to a twelve hour shift, his extension of duty hours, even actually to perform incidental work such as cleaning up for the next day's work, mandates a conclusion by this Board that some penalty is justified by the Claimant's actions in remaining at work for an additional hour and fifty minutes on October 3, 2007. Although the Claimant should have ceased work earlier, as directed, the evidentiary record does not persuasively establish any dishonesty or falsification of a Company record. Thus, a substantial reduction in the penalty is warranted.

Based on the evidence submitted, the Carrier violated the Agreement commencing December 11, 2007 when Claimant, Manuel Rodriguez (6497945), was assessed a Level S 10-day Record Suspension for falsification of time from October 1, 2007 through October 3, 2007. The suspension shall be reduced from a Level S 10-day Record Suspension to a ten day record suspension for remaining on duty longer than necessary.

The instant claim is denied in part and sustained in part.

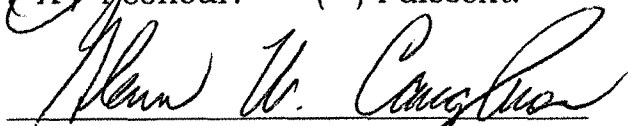
We so find.



Daniel F. Brent, Impartial Chair

Dated: 6-3-09

I concur. () I dissent.


Glenn W. Caughron, Carrier Member

Dated: 6-18-09

I concur. () I dissent.


David Tanner, Organization Member

Dated: 6-15-09