

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7426
AWARD NO. 19, (Case No. 19)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

UNION PACIFIC RAILROAD COMPANY (SPWL)

William R. Miller, Chairman & Neutral Member
K. D. Evanski, Employee Member
P. Jeyaram, Carrier Member

Hearing Date: September 19, 2012

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The dismissal of Track Foreman C. D. Salcido for violation of Rule 1.6 (Conduct) of the General Code of Operating Rules in connection with his failure to enter time correctly claiming four (4) hours overtime on November 21, 2010 and five hours overtime on November 17, 2010, near Mile Post 950.2, when he did not respond to calls or perform the work described and for claiming eight (8) hours straight time for December 8, 2010 when he only worked five (5) hours is unjust, unwarranted, based upon unproven charges and in violation of the Agreement (System File T-1145-501/1551311D).**
- 2. As a consequence of the violation referred to in Part 1 above:**
 - * Claimant's Level 5 be expunged from his personal record.**
 - * Claimant be immediately reinstated to service and compensated for any and all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service.**
 - * Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Vision benefits for himself and his dependents. Vacation benefits, Personal Leave benefits and all other not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters.**
 - * Claimant to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can his house, his car, his land and any other personal items that may be garnished from him for**

lack of income related to this dismissal."

FINDINGS:

Public Law Board No. 7426, 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.

On December 27, 2010, Carrier notified Claimant to appear for a formal Investigation on January 10, 2011, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that while employed as Track Foreman on Gang 7415, at Tucson, Arizona, near Milepost 944.75, you allegedly failed to enter time correctly claiming four (4) hours overtime on November 21, 2010, and five (5) hours overtime on November 27, 2010, near Milepost 950.2 when you did not respond to calls or perform work as described. In addition, on December 8, 2010, you allegedly claimed eight (8) hours straight time but only worked five (5) hours due to reporting late for duty.

These allegations, if substantiated, would constitute a violation of Rule 1.5 (Conduct), as contained in the General Code of Operating Rules, effective April 7, 2010. Please be advised that if you are found to be in violation of this alleged charge, the discipline assessment may be a Level 5, and under the Carrier's UPGRADE Discipline Policy may result in permanent dismissal."

On January 19, 2011, Claimant was notified that he had been found guilty as charged and was assessed a Level 5 discipline and dismissed from service.

The undisputed facts indicate that the Claimant did not correctly enter time for three different days in less than a one month period which the Carrier asserted was dishonest behavior.

It is the position of the Organization that the Claimant made some non-purposeful errors in the submission of his time rolls which it attributed to the fact that his father in law had passed away unexpectedly, and he was helping his mother in law maintain her farm while maintaining his job requirements with the Carrier. It argued that the Claimant made an editing error on his daily required paper work which was approved by the Manager of Track Maintenance L. Collins who failed to notify the Claimant of his errors when approving time roll for Gang 7415. It also noted that after approving the time turned in by the Claimant, Mr. Collins then removed

Claimant from service for allegedly padding the time roll. It concluded the Claimant made a legitimate error, but under no circumstances did the Carrier prove he did anything dishonest and it requested that the discipline be rescinded and the claim sustained as presented.

It is the Carrier's position that the Claimant claimed compensation for time not worked. According to it the Claimant inappropriately requested monies not earned on three occasions and numerous witnesses testified that the Claimant was not at work at the times he said he was. It further argued that the record shows that the Claimant is a Foreman who was experienced in entering time rolls and it was peculiar that during the same time period covered by the Notice of Investigation he had entered time for other employees correctly and the only mistakes made involved his payroll and that all where to his behalf. Additionally, it noted the only mistakes he made during this period of time were monetary. It reasoned that was dishonest behavior and it closed by asking that the claim remain denied.

The facts indicate that at the time of the incident the Claimant was employed as a Track Foreman on Gang 7415, in Tucson, Arizona. The Carrier argued it became aware of the Claimant's alleged misconduct when Manager of Track Maintenance, L. R. Collins, was reviewing payroll records on December 2, 2010. Mr. Collins testified at the Hearing he noticed there were five employees out on a single November 21st overtime call. The record verified that only three or four employees are usually on such a call and because of that Collins decided to investigate why five employees were needed. Collins investigated the matter along with Track Supervisor DeLancey on December 6. In reviewing the records for that day it was discovered there were four people that worked the November 21st overtime call and Claimant was not one of the four, but Claimant paid himself for that time when he reported his hours. Management further investigated the records and discovered that the Claimant claimed five hours overtime for November 27th and he did not work on that date.

The evidence also shows that on December 8, 2010, employees were directed to attend a safety meeting at 6:00 a.m. Shortly, after the meeting began, Claimant tried to call Mr. Collins on his cell phone to advise him that he would not be able to come to the meeting because he was ill. Subsequently, Claimant decided to attend and arrived at the meeting between 8:00 a.m. and 9:00 a.m. Payroll records indicate Claimant requested eight hours pay for December 8th. According to the Carrier he worked approximately five to six hours, whereas, the Claimant contended he arrived at 8:00 a.m. and departed at 3:00 p.m. having worked seven hours. Under either scenario Claimant requested eight hours compensation for less than eight hours work.

On pages 102 and 103 of the transcript, the Claimant was questioned about the allegations as follows:

"Q Again Mr. Salcido, let me rephrase the question to you. On the date in

question, November 21st, did you perform any services for Union Pacific?

A I did not.

Q And on November 27th, 2010, at Milepost 950.2, did you perform any services at that location on that date?

A No sir, I did not.

Q Let's see, on December 8th, 2010, you allegedly claimed eight hours of straight time and as testified by numerous folks, you were not at the safety meeting in the beginning, did you claim eight hours of pay for that day?

A I did claim eight hours that day. I showed up at the office there at 8:00. I stayed after the safety meeting after we had our lunch. Mr. Collins has let everybody else go and I went back to the office and finished up on paper-work and doing the computer stuff and entering the rest of the time for that day.

Q Okay. And what time did you depart?

A Approximately 3:00.

Q 3:00 in the afternoon?

A Yes sir.

Q And you showed up about, I think you said about 9:00?

A 8:00 it was.

Q 8:00?

A Yes.

Q And you left at 3:00?

A Yes sir.

Q And your regular start was 6:00 a.m. to-

A 2:00.

Q -to 2:00?

A Yeah.

Q Okay. So you showed up at 8:00, left at 3:00, so that's seven hours, correct?

A Yes sir.

Q Okay. And you claimed eight, is that correct?

A That is correct. (*Underlining Board's emphasis*)

On page 104 of the transcript the Claimant confirmed he was called for overtime on November 21 and 27, but declined the opportunity and chose not to work. In Claimant's defense he stated he had been under a great deal of stress because his father-in-law had recently passed away and he was helping his mother-in-law operate their farm while working his regular assignment and a significant amount of overtime. According to him because of that he was confused over the days and inadvertently requested too much money. Substantial evidence was adduced at the Investigation that the Claimant was guilty of being careless in requesting money not earned, but the Board is not persuaded that it was done with intention to defraud the Carrier of money.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had eight plus years of service with a good work record. Claimant was careless in his payroll entries which was a serious infraction and the Board does not excuse his behavior. However, in this instance because of the unique circumstances it is determined that dismissal was excessive. The Board finds and holds that it is reduced to a lengthy suspension which is corrective in nature and in accordance with the Carrier's UPGRADE Discipline Policy. The Claimant is to be reinstated to his prior disciplinary status with seniority intact, benefits unimpaired, but with no back-pay. The Board also forewarns the Claimant upon reinstatement to be diligent to follow all Rules and be careful in the handling of his duties.

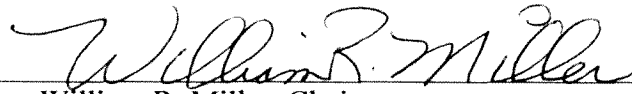
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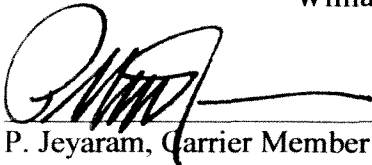
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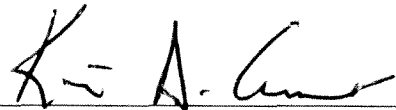
Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman



P. Jeyaram, Carrier Member



K. D. Evanski, Employee Member

Award Date: 1-14-13