PUBLIC LAW BOARD NO. 4101

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION - T&C

-and-

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

AWARD NO. 41
CASE NO. 41

STATEMENT OF CLAIM:

Time Claim of Switchman D. L. Crawford for reinstatement to service with pay for all time lost including health and welfare benefits, and with vacation and seniority rights unimpaired as result of investigation held in Dallas, Texas, on June 24, 1985.

FINDINGS:

This Public Law Board No. 4101 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

The Organization contends that the only charge in compliance with Article 25 of the Agreement is that concerning "marking off under false pretenses...." While the June 14, 1985 charge letter is inartfully drafted, Mr. Crawford and his representative could and we believe did understand that they were to defend against other charges alleging possible rules violations.

I

The Carrier found Mr. Crawford responsible for marking off under false pretenses after reporting an on-the-job injury at

approximately 12:15 a.m. on June 13, 1985. The burden of proof is on the Carrier in discipline matters to substantiate its findings of responsibility by substantial evidence of record. Mr. Crawford denied that he marked off with a personal injury. Mr. Streety testified concerning his telephone conversation with Mr. Crawford at 12:30 a.m. on June 13 prior to Mr. Crawford's leaving the property:

> ... I told Mr. Crawford at that time that I could [not] help but wonder how this might be related to the fact that he had played in a baseball tournament the weekend before and he said it might be related in some way but that he had pulled the muscles in his leg running to catch the car and set the hand brake....
> (Tr-5)

Mr. Crawford testified in part concerning his conversation with Mr. Streety at 12:30 a.m. on June 13, 1985 that:

> ... It was clear to both of us upon my explanation of playing in the tournament in 95 degree heat that this could not be an on the job injury....
> (Tr-15)

Mr. Streety testified that it was Yardmaster Smith who told him that there was a personal injury on the lead. Mr. Crawford denied that he told the Yardmaster that he had a personal injury. And the Carrier did not call Ms. Smith as a witness to develop the facts in this regard. Rule 806 requires the following:

> 806. REPORTING: All cases of personal injury, while on duty, or on company property must be promptly reported to proper officer on prescribed form.

Mr. Streety did not testify that he informed Mr. Crawford to fill out the MKT's "Form 335 Rev" as is required in personal injury

cases. Nor did Mr. Crawford himself fill out such a report as he would be required to promptly do in a personal injury case under Rule 806.

Superintendent Gale improperly cut off the questioning of Operator-Clerk Nunez as to whether Mr. Streety instructed him to mark Mr. Crawford off with a personal injury, but the record is clear that Mr. Nunez himself took it upon himself to mark Mr. Crawford off "ODI" -- on duty injury.

Ultimately the Carrier has not shown that Mr. Crawford marked off under false pretenses. The fact that some thirteen and one-half hours after marking off he was squatted down using a drill at his wife's soon to open tanning salon does not prove that he did not have the strained or pulled thigh muscles that he informed Mr. Streety of at 12:30 a.m. To meet its burden of proof on the false pretenses charge, the Carrier would have to show that Mr. Crawford was performing activity incongruous to the condition asserted as the basis for marking off. The Carrier has not met this burden with substantial evidence of record.

II

The Company in its inartfully drafted charges refers to Mr. Crawford refusing to see the Company doctor on June 13, 1985. Such would be the basis for the Carrier's finding of insubordination. At 2:05 p.m. Mr. Streety was clearly aware that Mr. Crawford was not claiming an on-the-job injury. (See Tr-19, lines 19-23). Mr. Crawford was marked off duty and was not under pay, he had not filed a Rule 806 personal injury report, and the Carrier through Mr.

Streety at least as of 2:05 p.m. was aware that Mr. Crawford had no design to assert an on duty personal injury. Mr. Crawford had no obligation to see a Company doctor on these facts on June 13, 1985. And Mr. Crawford recognized on June 13, 1985 that he did have an obligation to see the Company doctor before returning to work, which obligation he did in fact fulfill on June 18, 1985. The Company has not met its burden of proof on Rule 607(3) violation.

III

The Carrier has asserted a Rule 606 "unauthorized employment" violation. The Carrier has the burden of proof, as set forth previously, to prove its case by substantial evidence of record. If an employee engages in another business or occupation without proper authority it is a violation of this Rule. This Board suspects that Mr. Crawford did not have authority from the proper authority, that is the General Manager, to allow him to help his wife do the things necessary to open up her business on June 17, 1985. (See Tr-16). However, this Board cannot make a decision based on a guess or suspicion. The Carrier never called any witness to testify that Mr. Crawford did not have authority. Nor did the Carrier ask Mr. Crawford himself if he had such authority. We are compelled to conclude that the Carrier has not shown by substantial evidence of record that Mr. Crawford had violated Rule 606.

IV

We have studied all of the cited rules and we conclude that the Carrier has not shown by substantial evidence of record that Mr. Crawford was responsible for violating any of these Rules. Mr.

Crawford shall be returned to service with all rights unimpaired, as previously directed by the Board. And as set forth in Article 25 he shall be "paid for all time lost."

AWARD

Sustained as per Findings.

David P. Twomey, Chairman
and Neutral Member

Mr. J. A. Alford
Employee Member

Mr. M. L. Janovec
Carrier Member Dissent

DATED: 3/16/88