

PUBLIC LAW BOARD NO. 5850

Award No. 186
Case No. 186

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on November 16, 2000, Mr. D. E. Cier was issued a Level-3, 30-day actual suspension for violation of Maintenance of Way Operating Rule 1.6 in connection with his alleged failure to provide factual information and dishonesty in connection with per diem payments claimed in the PATS Timekeeping System covering the period June 1, 2000 through September 8, 2000, while assigned as Head Welder working at Sidney, Nebraska and headquartered at Sterling, Colorado.

2. As a consequence of the Carrier's violation referred to above Mr. Cier shall be compensated for all wages lost and the discipline shall be removed from his personal record in accordance with the Agreement.

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 is a Lead Welder who, during the period of the claim, was headquartered at Sterling, Colorado, working in the vicinity of Sidney, Nebraska. Claimant lived at Hemingford, Nebraska, close to 100 miles from Sidney, but he opted to drive daily. The employee working with Claimant functioning as a grinder lived at Sidney, Nebraska.

The Roadmaster testified he approached Claimant and the grinder stating he would temporarily change their headquarters to Sidney about 40 miles from Sterling, Colorado, and pay them mileage. The reason given by the Roadmaster was that by starting and ending the workday at Sidney, they would not have to drive out of Sterling every morning.

Claimant, supported by the grinder, testified that the Roadmaster was anxious to have the two work the welding truck for the summer and said if they would stay until either was displaced or until the end of summer, he would cover their expenses.

The Roadmaster, in his testimony, also said he made it absolutely clear to both that he would only cover the daily mileage expense and nothing else.

When Claimant was queried about the daily per diem he had claimed, in addition to the daily mileage, he stated that he was advised by another welding crew working at Sidney, that they were paid the daily per diem, and therefore he believed nothing was wrong with him claiming the per diem in addition to the mileage.

So there exists conflicting testimony. Claimant and his assistant (the grinder) saying that the Roadmaster referred only to taking care of their expenses and the Roadmaster stating he was clear in his discussion about authorizing only their driving miles.

Claimant and the grinder received \$21.25 per day for five days per week from June to early September. In addition, they received mileage from Sterling to Sidney and return for five days per week at 80 miles per day, miles they did not actually drive.

It is clear from the record neither Claimant nor the grinder advised the Roadmaster that they were claiming per diem expenses, but they relied on Rule 38 and

the fact that they were temporarily assigned headquarters at Sidney.

Rule 38 seems to cover the per diem claim under the circumstances outlined herein, but the daily mileage claims that were submitted and paid does work contrary to Rule 38. It would appear they were traveling from their headquarters point in Sterling to Sidney daily, yet the per diem expense shows they were not traveling.

It further developed that someone from payroll did contact Claimant in June asking about the per diem claim. Claimant told the payroll person that their temporary headquarters was changed to Sidney and it had been authorized by the Roadmaster.

So someone in payroll knew about the per diem and was satisfied with Claimant's explanation that their headquarters had been changed temporarily by the Roadmaster. This appeared to satisfy the payroll inquiry, but no one from payroll queried the Roadmaster until an auditor contacted him some time on October 10, 2000.

When all the factors are considered, the Board does believe that the Claimants understood they were being allowed a mileage expense, but that the per diem claims made by them were done of their own volition without the Roadmaster's OK. Furthermore, when queried about claiming both mileage and per diem, Claimant's witness stated that they chose the mileage in lieu of lodging.

When payroll questioned Claimant in early June, he should have verified Claimant's response with the Roadmaster which he did not do. Claimant should have advised the Roadmaster he was claiming per diem, which he did not do.

Under the circumstances, Claimant cannot be held fully responsible for what occurred. The 30 day actual is reduced to 15 days with Claimant being paid for lost wages commencing on the 16th day, through and including the 30th day as provided for in

the Scheduled Agreement.

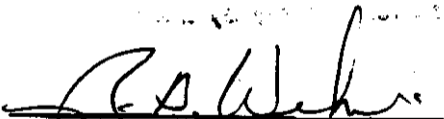
AWARD

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 date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: December 27, 2001