

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 237**

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 allegedly violated the Agreement when investigation was held on April 9, 2003, and Mr. R. P. Avalos was dismissed from service for allegedly violating Rule 1.6, Part 4 of the Maintenance of Way Operating Rules in connection with alleged falsification of expense report for weekend travel and miles claimed that were never driven.**
- 2. As a consequence of the Carrier's violation referred to above Mr. Avalos shall be reinstated with seniority, vacation, all rights unimpaired and pay for all wages lost commencing March 5, 2003 continuing forward and/or otherwise made whole.**
- 3. That any mention of the charges relating to this incident shall be removed from Mr. Avalos' personal record.**

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.

See Case No. 235 for the facts leading to the investigation.

Claimant contended that he did not receive a copy of the notice of charges until he arrived at the investigation, but no objection was filed thereto.

The Organization alleged several instances of Carrier depriving Claimant a fair and impartial investigation, but those charges were the same set out in Case Nos. 235 & 236.

Despite the alleged miscue that was supposedly committed by the Carrier, Claimant did readily admit he filed a false claim. Following is an excerpt from the investigation transcript:

- "83. Q. Mr. Avalos, is this the travel allowance that you submitted for the time in question?
A. Yes.
84. Q. And, Mr. Avalos, it says on here that on date of travel home was 2/6/2003. And then it says date, return date was on 2/9/2003, are those the dates that you traveled home?
A. No.
85. Q. Can you tell me, did you travel home for this travel allowance?
A. No.
86. Q. And this receipt here, how did you obtain this receipt?
A. It was somebody else, (inaudible), this was, I forget it for the receipt.
87. Q. And for the weekend in question, what did you do?
A. That weekend? I just drive around.
88. Q. You drove around Barstow?
A. No.
89. Q. No, where, where did you drive around at?
A. Arizona."

Regardless of any miscues in the handling of the investigation, all such contentions are nullified by a confession of wrongdoing. See the language set forth in Award 2 of Public Law Board No. 1790 as quoted in the last portion of Case No. 235.

Even without the confession, the Carrier furnished sufficient evidence of

Claimant's culpability of the charges assessed. Carrier's actions are upheld by this Board.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member

Dated: Sept. 4, 2003



Thomas M. Rohling, Carrier Member

William Lyeck
as of August 21, 2003