

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 288**

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 on September 20, 2005 when Claimant, J. J. Johnson, was dismissed for violation of Maintenance of Way Operating Rules 1.6-Conduct and 1.19-Care of Property, when Claimant used Company vehicle for personal use without permission on June 30, 2005; and improper claim for weekend travel allowance for the weekend beginning July 1, 2005 through July 5, 2005.
2. The Carrier violated the Agreement on September 20, 2005 when Claimant, J. J. Johnson, was dismissed for violation of Maintenance of Way Operating Rules 1.6-Conduct and 1.15-Duty-Reporting of Absence, when Claimant was absent without authority on July 1, 2005 and paid himself an unauthorized personal leave day for July 1, 2005, and holiday pay for July 4, 2005 for which he did not qualify.
3. As a consequence of the violations referred to in parts 1, 2, and 3, the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights restored, remove any mention of this incident from his personal record, and make him whole for all time lost beginning September 20, 2005 forward.

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 was cited in two letters for two separate violations. The investigations were piggy-backed, one following the other. Both letters were dated July 21, 2005. The

first investigation explored the following:

"...to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.6, 1.13 and 1.15 of Maintenance of Way Operating Rules, effective October 31, 2005, as supplemented or amended, concerning your alleged absence without proper authority on July 1, 2005, your alleged claim for personal leave day when not authorized on July 1, 2005, and your allegedly claiming holiday pay when not entitled for July 4, 2005, while employed as Welding Foreman at Ash Fork, Arizona."

The second investigation explored the following:

"...to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.6, 1.13 and 1.19 of Maintenance of Way Operating Rules, effective October 31, 2004, as supplemented or amended, concerning your alleged use of company vehicle for personal use on July 30, 2005, and your allegedly claiming weekend mileage when not entitled on July 2 and 3, 2005 while employed as Welding Foreman at Ash Fork, Arizona."

The first investigation developed that Claimant called his Supervisor about 10:30 PM on June 30, 2005, stating he would not be at work on July 1, 2005, because he was in jail.

The next contact was 12:00 noon on July 1, 2005, with Claimant advising he was out of jail and on his way walking home. Claimant advised the company truck was at his home with the keys at the police headquarters.

Shortly after the 4th of July, the Carrier received a tip on its hot line which was being monitored by the Internal Auditors which did lead to finding Claimant claiming a personal day on July 1, 2005, and pay for July 4, 2005.

Claimant's Supervisor was definite that in the late hour on June 30, when Claimant first called the Supervisor he did not grant Claimant the right to claim July 1, 2005, as a personal day specifically because Claimant was unavailable for service because of being in jail. The fact that the Supervisor would have refused to grant Claimant's personal

day's pay while he was in jail is supported by numerous Boards that have supported unauthorized absence charges due to an individual being in jail. But, again, Claimant did not request a personal day.

It is clear that Claimant did improperly claim pay to which he was not entitled to. To claim time for which you are not entitled to is fraud. Claimant was not authorized by any Supervisor to claim July 1, 2005, as a personal day to receive pay for the workday before July 4 in order to qualify for holiday pay.

To the satisfaction of this Board, the Carrier furnished sufficient evidence of Claimant's culpability for the charges assessed in the first investigation. Under the circumstances, the discipline of dismissal is upheld.

The discipline of dismissal in the first case renders the second investigation moot, although the Board does find Claimant used a company vehicle without authorization but the evidence of Claimant falsely claimed mileage was questionable.

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


David D. Tanner, Labor Member


Samantha Rogers, Carrier Member

Dated: 11/29/06