

PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 302

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant, E. M. Corchado, was assessed a 20-day record suspension on March 14, 2006 for a violation of Maintenance of Way Operating Rules 1.6-Conduct, 1.13-Reporting and Complying with Instructions, and 1.4-Carrying Out Rules and Reporting Violations when Claimant was absent without authority on January 3 and 4, 2006 and paid himself vacation for the these 2 dates after instructed they were to be reported as "unauthorized absences"; and
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing March 14, 2006.

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 the Foreman on an extra gang. Near the end of Year 2005, Claimant, who already had the last two weeks of December, 2005 off as vacation time, requested of his Supervisor at the time if he could also take the first week in January,

2006. His Supervisor at the time agreed, but the gang relocated in an area under a different Supervisor. On January 3, 2006, Claimant was a no-show. His new Supervisor tracked Claimant down and contacted him in Juarez, Mexico. The new Supervisor instructed Claimant to return as soon as possible. It took 2 days to return, as Claimant when contacted was 1,100-1,200 miles from his home.

Claimant when contacted thought he was covered, and when advised he was considered as being absent without authority, he packed up and headed home. When Claimant got on the job and was preparing his payroll, he asked this Supervisor if he could take the 3rd and 4th of January 2006 as floating vacation. This is a privilege of an employee as long as he has authority.

The Supervisor had to know that when he told Claimant that he must list the two days as unauthorized absences, that Claimant would not only lose the two days pay, but he would also lose four days holiday pay.

To this Board, this is a very costly punishment for a Claimant who thought he was on a legitimate vacation.

Claimant made two errors in this incident that makes this a difficult case to issue an Award in his favor. He did not fill out the form he was required to complete to change a vacation in whole or in part, and he ignored the instructions of his Supervisor when he claimed the 3rd and 4th of January as floating vacation days.

Claimant said he did seek advice from others who found it was possible to put in for floating vacation days, but it is hard to believe that he told the advisors of the exact circumstances. Everyone knows or should know that you are to follow the instructions of your Supervisor. If you don't, you could be cited for insubordination. The old horn

book ruling in railroad grievances is to obey now and grieve later.

As stated before, Claimant erred in ignoring the Supervisor's instructions and this cannot go without some discipline; thus, the 20 day deferred suspension will stand.

AWARD

Claim denied.


ORDER

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


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees

Dated: November 26, 2007


Samantha Rogers, For the Carrier