PUBLIC LAW BOARD NO. 5860

Award No.
Case No. 306

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant, E. Gaytan, was dismissed on August 22, 2006 for a violation of Maintenance of Way Operating Rules 1.6-Conduct and 1.19-Care of Property for failure to comply with instructions and misuse of company property on May 10 and 11, 2006; 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 August 22, 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 a Lead Welder headquartered at Post, Texas living at Lubbock, Texas 42 miles east of Post.

The Supervisor is headquartered at Lubbock, Texas and was on her first assignment as a Roadmaster.

The Roadmaster's headquarters is Lubbock, whereas the welders live in Lubbock

out were headquartered at Post. The Roadmaster and those living at Lubbock worked out a vest pocked Agreement, thus when the welders were working in Lubbock or west of Lubbock, they could start out and end their day at Lubbock. When working other than in Lubbock or east of there, they would start and end the day at the assigned headquarters, Post, Texas.

The Supervisor advised Claimant twice, once on Wednesday and again on Thursday, that he was to leave the welding truck at Post instead of Lubbock. This he did not do.

The Carrier then advised Claimant that an investigation was being convened:

> "...to develop the facts, and place responsibility, if any, in connection with your possible violation of Rule(s) 1.6 and 1.19, of the Maintenance of Way Operating Rules, in effect October 31, 2004, as supplemented or amended, concerning your alleged failure to comply with instructions given by your supervisor when you did not report back to your headquartered location on or about Wednesday, May 10, 2006 and Thursday, May 11, 2006 as well as your alleged misuse of company property when you drove a welding truck from Post, TX to Lubbock, TX on personal time, on the Kansas division, while assigned as Lead Welder, on Post Headquarter Welding Truck.
>
> Alternative handling in lieu of investigation as per applicable collective bargaining agreement, will be considered under the terms of the Safety Summit Agreement. Request must be made in writing to Division Engineer...."

After several mutually agreed postponements, the investigation was held July 31, 2006.

The Carrier believed they had furnished sufficient evidence to establish Claimant's culpability for the charges listed in the notice, and in a letter dated August 22, 2006, they advised Claimant he was dismissed.

The record convinces this Board that the Carrier did furnish sufficient evidence. This is based on testimony of Claimant during the investigation. He was less than

candid. The Carrier did advise the Organization during the on-property handling as follows:

> "...Claimant's testimony is not credible. First claimant testifies that Roadmaster Holle did not talk to him in person and that she never instructed him to tie up at Post, Texas. But then later in his testimony found on page 37 lines 17 through 20 of the Investigation Transcript he states that he did talk to Roadmaster Holle on Wednesday."

Insubordination has several forms - either in your face, "I am not doing what you say" or listening quietly to the instructions and then ignoring the instructions. The latter version is Claimant's.

This is his second insubordination rap in less than 12 months, and to the Carrier it is a dismissal offense. The Carrier's decision to dismiss is appropriate.

It is noted Claimant had the opportunity to waive the investigation under the alternative handling but declined for whatever reason to take his chances at an investigation.

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, For the Employees
Dated: March 10, 2008

Samantha Rogers, For the Carrier