PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 313

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. Corchado, was assessed a 30-day record suspension for alleged violation of Maintenance of Way Operating Rules 1.13-Reporting and Company with Instructions; 1.15-Duty-Reporting or Absence; 1.4 Carrying Out Rules and Reporting Violations; and 1.6-Conduct when Claimant released Gang TMGX00257 at 1510 without proper authority; 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 June 6, 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.

On April 11, 2006, the Carrier wrote Claimant stating an investigation was being convened:

> "...to determine the facts and place responsibility, if any, in your alleged unauthorized early release of Gang TMGX0257 at Pittsburg, California on March 16, 2006. The gang was scheduled to work from 0600 hours to 1600 hours on the above date and was released at 1510 hours with out proper authority."

The Carrier determined it had sufficient evidence presented that clearly supported the charges set forth in their notice of an investigation.

Claimant and his gang were working on a project that was labeled by the Roadmaster as a re-collectible. In other words, some other party was picking up the tab for the work Claimant and crew preformed.

The crew was working four ten-hour days. Their assigned hours were 0600 to 1630. They usually were released from the work project at 1600 hours as they were 30 minutes from their motel, which was considered sufficient.

A signal gang was working in conjunction with Claimant's crew. This Supervisor called Claimant's Supervisor and advised that Claimant's crew at about 1510 appeared to be ending their work day 45 minutes in advance of the time the crew was usually tied up. He testified that the crew removed their hardhats and other protective clothing.

The Signal Supervisor stated he asked a member of Claimant's crew if they were heading in for the day and that crewmember affirmed they were.

Claimant's Representative requested the Carrier call as a witness a crewmember, but they also requested the Carrier to pay that witness's expenses and for any wages he may lose. The Carrier stated they would arrange for the witness to be released from work, but cited the Rule wherein the Carrier would not be responsible for any lost wages.

That witness, however, showed up at the investigation and testified to the time it took Claimant (with whom he was riding with) to drive to the car rental agency (the truck Claimant was driving was rented as since he was being displaced, he wanted his name off the lease) which apparently was not too distant from the work site, then they drove to

the motel arriving about 1625. The rest of the crew was already at the motel.

The Signal Supervisor did not follow any of the crew to the motel so he had no knowledge as to when they arrived, but it was stated all the crew was there.

The Roadmaster in charges stated the time allowed to drive to the motel was 30 minutes even at the peak time when people were heading home from work.

One could readily assume the crew tied up at least 45 minutes early, but assumptions are not facts. Claimant stated the traffic on Highway 4 was bumper to bumper, so who knows how long it took the crew to drive from the work site to the motel where they were staying.

The Carrier assessed Claimant a 30-day record suspension, thus he lost no time, but this incident and discipline were entered on his discipline sheet.

Under these circumstances, this Board finds the Carrier did not furnish sufficient evidence that established Claimant's culpability for the charges assessed. His record is to be cleared of all traces of this incident.

AWARD

Claim sustained.

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

Robert L. Hicks, Chairman & Neutral Member

David D. Tanner

David D. Tanner, For the Employees

Samantha Rogers

Samantha Rogers, For the Carrier

Dated: June 30, 2008