

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 316**

(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 Claimants J. E. Rojas (foreman); E. A. Benzon; R. Sanchez; R. L. Friend; and P. Villegas, were dismissed on August 10, 2006 for alleged violation of Maintenance of Way Operating Rules 1.6-Conduct; 1.13-Reporting and Complying with Instructions; 1.16-Subject to Call; and 1.15-Duty-Reporting or Absence for leaving early without authority and falsifying time between March 15, 2006 and May 11, 2006; and**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimants to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimants personal records, and make Claimants whole for all time lost commencing August 10, 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 May 11, 2006, the Carrier jointly addressed a letter to each of the Claimants listed in the Statement of Claim advising them an investigation was being convened:

"...to determine all facts and place responsibility, if any, in your alleged unauthorized early leave before quitting time and for falsifying pay in PAR/RATS between March 15, 2006 thru May 11, 2006...."

This was a construction crew with Jose Rojas being the Foreman. The crew was working a compacted workweek, four ten-hour days Monday thru Thursday, and rest days of Friday, Saturday and Sunday. Their assigned hours were from 7:00 AM to 5:30 PM. On May 11, 2006, Claimant's Supervisor visited the worksite about 1545 hours to find there was no one working. However, two Claimants, Sanchez and Villegas, were at the site sitting in their truck filling out driver logs.

When the Supervisor asked about the Foreman, the response was that he had a family problem and left early. The Supervisor contacted the Foreman, asked about his location and the response was that he was on his way home as he had family problems. When asked why he didn't call him (the Supervisor), the Foreman just said he had family problems. The Supervisor contacted the rest of the crew to order them to return. One Claimant returned quickly (Benzon), but the Foreman did not get back until 1715 hours and Claimant Friend never returned.

The Supervisor advised the Foreman to correct the time to reflect the actual time the crew worked. Several days later, the Supervisor checked the payrolls and discovered the Foreman corrected only his own payroll, not that of the other four in the gang.

The Supervisor's further talk with the crewmembers revealed that they had been leaving early on Thursdays (their last day of the workweek) since Rojas took over as the Foreman.

The crew said on Thursdays they started at 0600, but this was not sanctioned by the Supervisor. The early start of the crew was done by the members on their own.

The average early quits on Thursdays going back to March 15, 2006 were two

hours. Only Claimants Friend and Benzon had payroll compute the two hours early quit cost, and each anted up.

Claimant Villegas attempted to convince this Board that for the two years he was in the crew, it had been a practice to start at 0600 and to leave early on Thursdays, but the Foreman preceding Rojas never admitted to this allegation. Since there is no other evidence of a standing practice, this Board does not consider the past practice defense, and even then no past practice can change the Rules.

On August 10, 2006, each Claimant was advised that their seniority and employment with the Carrier was terminated.

This Board finds the Carrier was furnished sufficient evidence of each Claimant's culpabilities for the charges set forth in the notice of the investigation, and even though only the Foreman was doing the payrolls for each, all enjoyed the 38 hours workweek and the pay for forty hours.

All Claimants other than Rojas are to be returned to service with all their seniority rights reinstated. Claimant Rojas is not to be reinstated. As a Foreman, he does have an allegiance to his crew, but he also has to have an allegiance to the Carrier. He cannot change working hours without authority, nor can he authorize early quits without authority.

Even though each Claimant has lost considerable time, the discipline is justified as they accepted pay for time not worked. There is no pay for any time lost.

AWARD

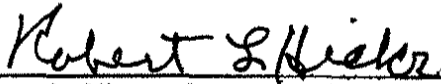
Claim sustained in accordance with the Findings.

AWARD

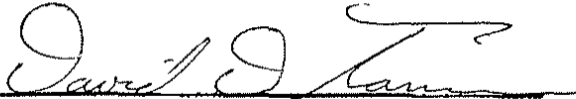
Claim sustained in accordance with the Findings.

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, Chairman & Neutral Member



David D. Tanner, For the Employees



Samantha Rogers, For the Carrier

Dated:

June 30, 2008