

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 33

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Western Region, Foreman J. E. Bean from service was unjust.
2. That the Carrier now reinstate Claimant Bean with seniority, vacation, all benefit rights unimpaired and pay for all wage loss from October 7, 1997 continuing forward and/or otherwise made whole as a result of Investigation held 10:00 a.m. October 4, 1996, because the Carrier did not hold the Investigation in a timely manner, or send out a prompt letter of the result of the Investigation nor introduced substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 September 16, 1996, Claimant was sent the following notice of an Investigation:

"Arrange to report to the Superintendent of Operation's Conference Room...at 10:00 AM, September 26, 1996, for formal investigation to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.2.7, 1.4, 1.6, 1.13, 1.15 and 20.1 of the Burlington Northern Santa Fe Maintenance of Way Operating Rules, effective August 1, 1996 concerning alleged falsification of payroll reporting on August 9, 1996 and August 12, 1996."

On September 26, 1996, Carrier corrected its notice to reflect the alleged falsification of payroll reporting occurred on the dates of August 9 and 13 of 1996.

The Investigation was properly postponed until October 4, 1996, and on October 7, 1996, Claimant was advised that his services were terminated.

Two events involving Claimant and his gang caused Carrier to investigate Claimant's time reporting.

On Friday, August 9, 1996, Claimant's immediate Supervisor, while on his way to Claimant's headquarters point, passed Claimant who was in his own truck heading away from the headquarters at about 2:20 PM. When the Supervisor arrived at the headquarters site at 2:35 PM, he was unable to locate any of Claimant's crew. He did note that the company vehicles were parked in their usual places but no personal vehicle was to be found.

On August 13, Claimant's Supervisor approached Claimant at 2:35 PM at his headquarters to seek a flagman for the next couple of days. Claimant advised no one in the crew wanted the flag job so Claimant's Supervisor traveled to the other end of the yards seeking a flagman (which was accomplished). Upon his return to the headquarters at 3:05 PM, the Supervisor could find only two of Claimant's crew working. The others had disappeared. Claimant and the crew have assigned hours of 7:00 AM to 3:30 PM, Monday thru Friday.

Usually the charge of falsifying payroll reporting carries a connotation of fraud with the accused the recipient of the falsely claimed time. In this instance, however, the facts do not entirely support this view.

It is clear from the record that Claimant was not out to defraud the Carrier solely for his own financial gain, but Claimant assumed the mantle of the benevolent benefactor for his crew and was

less than precise when reporting time for himself and his crew. Claimant apparently was of the belief that as long as the time reported was fairly correct, the method of reporting did not matter that much.

For instance, when the truck driver reported at 6:30 AM to secure ice water for the crew, to check the tools on the truck, etc., testimony revealed that the truck driver would be entitled to 30 minutes overtime, but Claimant reported the truck driver as working overtime from 3:30 PM to 4:00 PM rather than the 6:30 AM to 7:00 AM that he actually worked.

A member of Claimant's crew did not work on the 9th of August, but Claimant recorded time worked on his behalf of 8 hours straight time, 30 minutes overtime and a per diem allowance. It was not until the Investigation that the employee who was off set the record straight by stating he was off on vacation. The time for this employee should have been 8 hours at the vacation rate and nothing else.

Another crew member worked only two and one-half hours on the 9th, but Claimant submitted time on his behalf for 8 hours straight time, a camper allowance and a mileage component. When asked why Claimant testified that rather than dock the employee for the time lost, they agreed that the employee would make up the time by working through the lunch hour.

Likewise on the 9th, when the entire crew was no where to be found at 2:35 PM, Claimant testified (and each gang member so testified) that because it was Friday and some crew members lived several hundred miles from the headquarters, they all had agreed to work through their lunch hours. The lunch hour was never intended to be a tool used to shorten the work day. It is true that in certain situations when the crew does run the lunch hour and are not permitted the 20 minutes until 20 minutes before quitting time, that a crew may just head home, but the manner the Claimant and

the crew used the lunch hour rule, it appears more as a feeble attempt to justify the early quit.

In another instance on the 9th, one crew member was attending a special safety meeting about 100 miles from the headquarters point. Claimant submitted this employee's time for 8 hours straight time, 6 hours travel time, 30 minutes overtime and for 300 miles. The 8 hours straight time and the 6 hours travel time were not questioned, but the 30 minutes overtime and the 300 miles were questioned. The schedule calls only for straight time when attending such meetings, and the 300 miles exceeded by nearly a hundred miles the actual distance driven.

Claimant, on August 9, claimed two hours overtime working from 3:30 PM to 5:30 PM. The record does not reflect where the second hour of overtime occurred or why it was claimed, but one hour was due Claimant for work he performed 6:00 AM to 7:00 AM ahead of his regular shift, albeit he reported the time worked at the end of his shift.

On August 13, all but two employees were gone from the work site by 3:05 PM, even though quitting time was not until 3:30 PM. There was no explanation from Claimant as to why he claimed time for each crew member until 3:30 PM, but Claimant was questioned about working overtime for one hour on that date. Claimant testified he did work the overtime and one of the members of the gang that did work testified Claimant was with them at the job site, even though the Supervisor could locate only the two employees who did work overtime.

There are several other unexplained but highly suspect events that occurred that cloud the issue. One was the case of the missing time book (the book the Foreman keeps to record time worked at the time it was worked for later inputting on the computer), and the second event was the deletion on August 22 of legitimate time worked by several of Claimant's gang on August 9.

Claimant contends he mailed the time book as required, but it never was received by the party

to whom addressed.

Regarding the deletion of time for certain crew members without benefit of explanation, Carrier's computer operations assigns ID codes to the inputors and each inputor must log in his code as well as the password. Without both the records cannot be accessed. Mysteriously, Claimant's code appeared when the time was deleted. Claimant professed innocence of deleting time, yet no one could logically explain how someone other than Claimant could log on with Claimant's ID number and password. One would almost believe it was Claimant who did the deletions, but for one factor. In doing the deletion, an entry was made to delete from Claimant's record one of the two overtime hours he had claimed for the 9th, then the hour overtime was reentered. The time from when the deletion entry was completed and from when the overtime was reclaimed is 15 hundredths of a second. Claimant stated that he is not that adept at inputting and even the Carrier's expert witness admitted that was awfully fast time.

The August 22 incident, although being an interesting side line, does not have any bearing upon the findings of this Board as the Carrier did not furnish substantial evidence that Claimant did the deletions.

The missing time book does explain Carrier's somewhat tardy establishment of an Investigation into Claimant's faulty time keeping as they were seeking further evidence of what may have been other time roll falsifications.

In the Board's opinion, the delayed Investigation did no harm to Claimant although some did testify that the time lapse did dim somewhat their ability to completely recall specific events on the charge dates.

Claimant did falsify the payrolls, but not necessarily for his own benefit other than to appear

as the good guy to his crew members. Apparently, he thought that was one of the ways he was able to get along with his crew. On this basis, Claimant is culpable for the charges assessed and some heavy discipline is due. Dismissal, however, is too harsh.

Claimant has been with the Carrier since December, 1973, and has had several encounters with the disciplinary process, and several of the charges appeared to call for dismissal or long suspension, yet Claimant lost only seven weeks total time which reflects the act was less erroneous than the charge would indicate.

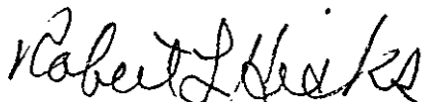
It is noted that Claimant does have seniority in categories other than Foreman. Accordingly, it is the Board's decision that the dismissal be converted to a disqualification as a Foreman and suspension without pay for the time out of service. Claimant is to be returned to service in whatever category he holds seniority excluding, of course, that of a Foreman.

AWARD

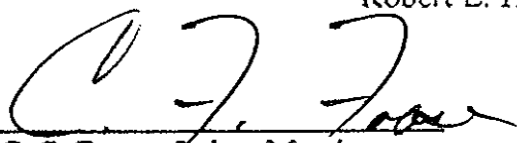
Claim sustained in accordance with the Findings.

ORDER

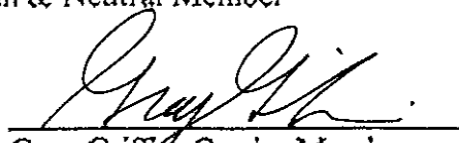
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



C. F. Foose, Labor Member



Greg Griffin, Carrier Member

Dated June 11, 1997