

PUBLIC LAW BOARD NO. 5850

Award No. 352
Case No. 352

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant Axel Zamora was given a Level S 30-Day Record Suspension when the Carrier found the Claimant in violation of Maintenance of Way Operating Rules 1.6 and 1.4. The Claimant did seek permission for vacation and had no intention to incorrectly enter payroll incorrectly into the payroll system. The Claimant should be paid any loss of pay commencing August 14, 2008 forward and or otherwise made whole, and the discipline should be removed from his record.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline records and make Claimant whole for all time lost.

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 June 17, 2008, the Carrier wrote Claimant advising of an investigation:

"...to develop all facts and place responsibility, if any, when you allegedly paid yourself a total of 20 hours of regular time in PARS/PATS for 2 working days, when you were absent; Monday, June 9 and Wednesday, June 11, 2008. You are in possible violation of Rule 1.15 Duty-Reporting or Absence, Rule 1.4 Carrying out Rules and Reporting Violations and Rule 1.6 Conduct, subsection (4) Dishonest, and (5) Immoral of the Maintenance of Way Operating Rules in effect Sunday, October 31, 2004 with revisions

up to April 14, 2008. Also stated under this Rule 1.6 Conduct, any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated."

The Carrier then wrote Claimant on August 14, 2008, assessing discipline of a Level 5 30-day deferred record suspension plus a 3 year probation.

From the transcript of the investigation, it is clear Claimant was off June 9, 11 & 12 of 2008. On June 12 he requested a floater (a one day vacation) taken with the permission of authority. On June 9, he put in for a floater with no objection from his Supervisor. On June 11, he marked off sick, also with the approval of his Supervisor.

His problem leading to this investigation is how he prepared or reported his own payroll. On June 9 when he told his Supervisor he took a floater, he marked the payroll as though he worked. On the 11th, he called in one hour before starting time leaving a voice message declaring he was sick, yet on the payroll he requested a day's pay.

Claimant was candid about the payroll claimed when he testified, but he used the wrong code for the 9th and claimed a full workday for the 11th when he had marked off sick. This claiming time for a day not worked is a serious violation.

The 30-day record suspension is apt, but the 3-year probation is changed to a 12 month review.

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


Glenn W. Caughron, For the Carrier

Dated:

7/16/09