

PUBLIC LAW BOARD NO. 6237

**AWARD No. 7
CASE No. 7**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: September 7, 2001

DESCRIPTION OF CLAIM:

The discipline in question arose from the allegation that Claimant D. J. Ahl falsified his time records. Following investigation held March 22, 2000, Carrier determined Claimant to have violated the Dishonesty portion of Rule 1.6. Termination of his employment followed.

The Claim seeks to overturn the discipline.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

This matter presented procedural as well as substantive issues. Claimant was originally notified by letter dated January 18, 2000 to attend an investigation into the allegation that he falsified his time records for the last half of December 1999 in violation of Rule 1.6. Per Carrier's UPGRADE policy, violations of the Dishonesty section of the rule warrant the Level 5 disciplinary penalty of dismissal. At the time the allegation arose, Claimant had not quite three and one-half years of service with the Carrier.

The originally scheduled investigation was postponed at Claimant's request. Testimony in the record shows that the rescheduled date of March 22, 2000 was the product of an agreement between the hearing officer, Claimant's representative, and Claimant (see Transcript page 11 beginning at Line 37). A postponement notice dated February 2, 2000 was sent to Claimant to confirm the rescheduled date. The postmark on the return receipt shows that Claimant signed for the notice not later than March 9, 2000.

According to the record, Claimant had a telephone conversation with his Assistant General Chairman on March 15th whereby he requested another postponement because he had a physical examination scheduled for March 22nd. The record provided no details to explain the reason for the exam.

Claimant did not attend the investigation on March 22nd. His representative, who was present, provided a March 16, 2000 letter to document the request for a further postponement. No explanation for the physical examination was contained in the letter.

The hearing officer denied the requested postponement and went ahead with the investigation

as rescheduled.

The Board's review of the investigation transcript and the appeal record developed on the property reveals no procedural improprieties by the hearing officer. No physical incapacity or other medical necessity has been demonstrated in the record to establish why the physical examination could not have been rescheduled to allow Claimant to confront the rather serious allegation of misconduct lodged against him. On this record, the Board is compelled to conclude that Claimant chose not to attend the rescheduled investigation at his peril.

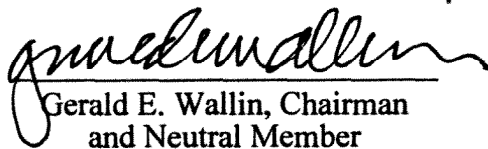
The Board also finds the investigation transcript to contain substantial evidence in support of the charge against Claimant. It shows that Claimant did claim overtime pay after agreeing with his supervisor to trade all overtime for the latter half of December 1999 for time off with straight time pay to attend to family business. Claimant also claimed holiday pay for which he was not entitled due to the time taken off. The record also shows Claimant had the opportunity to correct his time claim before January 5, 2000 but he did not do so.

Claimant and the Organization produced purportedly exculpatory information during the appeal process on the property. Claimant was the foreman for Gang 9017. According to the investigation transcript, he had no proper authority to perform timekeeping duties for Gang 9002 and claim overtime for it. Moreover, even if the signed statements provided by other employees, which were produced during the appeal process and not during the investigation (although several pre-date the investigation), were proper considerations, they do not alter the fact that substantial evidence supports Claimant's guilt. The testimony of Claimant's immediate supervisor, given at the investigation, constituted substantial evidence in support of the charge.

For the foregoing reasons, the Board must deny the Claim.

AWARD:

The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member