

PUBLIC LAW BOARD NO. 6402

The alleged failure to comply with instructions occurred on July 10, 2005, when Claimant

drove his personal vehicle to his work site. The Track Supervisor testified that he instructed all employees, including Claimant, that they were not to drive their personal vehicles to their work sites. Claimant testified that he received no such instruction. As an appellate body that does not observe the witnesses testify, we are in a comparatively poor position to evaluate relative credibility of the witnesses. Consequently, we defer to resolutions of conflicting testimony made on the property. In the instant case, we defer to the determination made on the property to credit the supervisor's testimony over Claimant's. We find that Carrier proved by substantial evidence that the instruction was given.

However, Claimant also testified that his Foreman instructed him to drive his personal vehicle because he would be working with two different gangs. The Organization also introduced a written statement from Claimant's Foreman that there were exceptions made to the general instructions and that Claimant was to drive. The Foreman was not called as a witness. Moreover, the Track Supervisor testified that he never checked with the Foreman to determine whether the Foreman had authorized Claimant to drive his personal vehicle. Thus, Claimant's testimony that the Foreman authorized him to drive his personal vehicle, as corroborated by the Foreman's written statement, is unrefuted. Given the state of the record, we are compelled to hold that Carrier failed to prove the charge by substantial evidence.

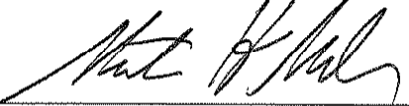
In addition to removal of the discipline, the claim seeks payment to Claimant for time and expenses of attending the hearing. However, the Agreement does not provide for such payments. Accordingly, the claim must be sustained except with respect to the claim for payment and reimbursement of expenses for attending the hearing.

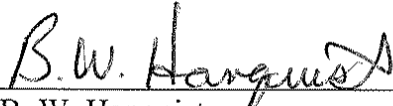
AWARD

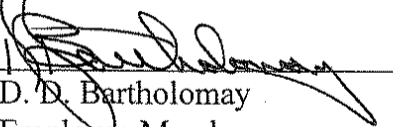
Claim sustained in accordance with the Findings.

ORDER

The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto


Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member 7/17/07


D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, July 12, 2007