

Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way)	
Employees' Division/IBT)	
)	
vs)	Case 101/Award 102
)	
Burlington Northern Santa Fe)	
Railway Company)	

Statement of Claim

Appeal of the dismissal from service of the Carrier of the Claimant to this case who is foreman Dave L. Engelbrecht.

Background

An investigation was held on November 21, 2006 to determine facts and place responsibility, if any, in connection with charges levied against the Claimant to this case whose name is Dave L. Engelbrecht. According to the charges, the Claimant allegedly falsified time-keeping records for the date of October 16, 2006 while he was assigned as a foreman, temporary headquarters at Gillette, Wyoming. An investigation into these matters was held at the depot in Gillette, Wyoming. After the investigation the Claimant was advised that he had been found guilty as charged and he was dismissed from service.

The discipline was appealed by the Claimant in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the Organization that created Special Board of Adjustment (SBA) 1112 under the authority of

the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been given final and binding powers to issue an Award in this case which is based on criteria outlined by the parties in Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

Discussion

The Claimant to this case is charged with falsification of timekeeping records while assigned as a foreman on gang TSCX0610 which was temporarily headquartered at Gillette, Wyoming. According to the record the Carrier first became aware of this alleged action by the Claimant on November 3, 2006.

Testimony at the investigation by the assistant road master of construction of the Carrier's Powder River Division, who was the Claimant's supervisor on October 16, 2006, is as follows. On the date at bar the Claimant's work hours were 7:30 AM to 4:00 PM. Between 3:30 PM and 4:00 PM the assistant road master met with the Claimant at a point called Donkey Creek and the former asked the latter to have a operator work over and help move and load some equipment. The equipment was to be moved on a low boy truck. The Claimant stated that he could not stay on the job because he had a prior commitment. When advised of this the road master told the Claimant that he would not be paid since he would not be staying over, even though the road master needed some of the Claimant's gang members to help move the equipment. The road master testified that the

Claimant acknowledged that he understood this. The road master then states that he called the Claimant again at 5:30 PM because he needed more equipment moved. The Claimant did not answer his phone. About an hour prior to that, or at about 4:30 PM, the road master had arrived at the depot and he testified that he saw the Claimant's work truck parked there but the Claimant's personal vehicle was gone.

Later, on November 3, 2006 the assistant road master did the weekly time review and noted that the Claimant had put in for seven hours' overtime for October 16, 2006. According to this witness he knew "...for a fact that (the Claimant) did not work that seven hours overtime..." The Claimant claimed seven hours overtime for himself, and six and a half hours for an employee by the name of Benjamin Clifford, who was an operator who stayed and worked on October 16, 2006 at Donkey Creek. There is documentary evidence of record to supplement the testimony by this witness. Under the Carrier's so-called PARS system a foreman puts down his own hours as well as the hours for all crew members who work for him. The hours were submitted by the Claimant on October 26, 2006 or some ten days after the incident under scrutiny in this case. For himself he showed that he worked 15 hours: eight straight time and seven overtime hours. There are no time clocks that were being used. According to the road master hours worked are recorded under an "...honor type system..." Another employee working on October 16, 2006 submitted a written statement for the record to the effect that he saw the Claimant leave the property from the section house around 4:20 PM. In testimony at the

investigation he states that he did not know if the Claimant came back and he also states that he did not know for sure if the time was 4:20 PM and it "...could have been ten minutes later..."¹ The operator who assisted with moving the equipment on October 16, 2006 also wrote a statement to the effect that the Claimant had left work on or around 4:30 PM. The latter corroborated this statement with testimony at the investigation.

Testimony by the Claimant is that on the day in question he was working as a foreman at Donkey Creek. He states that at about 4:30 he did proceed to leave the work location, after talking with the assistant road master, to go to Gillette "...to take care of computer work and cleaning out the truck and whatnot...". According to the Claimant he "...needed to go to town and check for general orders, try to input time, take care of my reporting, look at the bids, do some computer work, clean my truck out and get it fueled up...". He then went home which "...was approximately a little after 5:30 PM..." The Claimant admits that he clocked in for 15 hours on October 16, 2006. He explains his rationale for having done so as follows. He says he started work at 6:00 AM and not at 7:30 AM which is the normal start of his work day. This amounted to an hour and a half. He worked through lunch which was another half hour. By the time he got done with all of the paper work or "stuff in town" it was 5:30 PM which is another hour and a half. This amounted to 3.5 extra hours. According to him then "...3.5 plus my eight hours...so there we are 11.5 hours continuous service..." and under the union agreement, according

¹ At points in the record here this witness refers to the Claimant by a nick name which is: "Bambam".

to the Claimant, "...at anything over 11 hours I'm entitled to a meal which is one hour which puts me at 12.5 hours...". Further, according to the Claimant he charged for the call out when the road master tried to reach him by phone and talked with him which ought to have been 2.7 hours but he charged only for 2.5 which put him at 15 which is the result of "...eight hours straight time (and) seven hours overtime...".

Findings

The Board comes to the following conclusions after reviewing the record in this case. The Claimant states that he charged for time after leaving the work site after 4:30 PM on the date in question. He states inter alia that he spent time cleaning his truck. Testimony by the road master is that he observed the Claimant's truck on site but his personal car gone. Two other witnesses states that the Claimant left company premises at about 4:20 or 4:30 PM. The Claimant states that he charged 2.7 (really 2.5) hours for a call made to him by the road master after hours.

According to the road master they had no conversation albeit the latter tried to call the Claimant but without success. Subsequently, in his testimony, the Claimant admits that he may have confused dates. According to the road master the Claimant was not in the computer room at the section house albeit the Claimant states in testimony that after he left the work site he did so to take care of computer work, try to input time and so on. There is no evidence that the Claimant actually did any of

of this. The hours of work were not imputed until some ten days after October 16, 2006. The manner in which the Claimant arrived at 15 hours of chargeable time for the date of October 16, 2006 is novel and innovative. What he appears to have done is to have piecemealed various time periods to equal about what the operator from his gang worked in assisting the road master to move equipment on the day under scrutiny in this case. Perhaps he thought no one would have noticed. Unfortunately, the road master testified that he did audits. When asked if he felt justified in turning in the hours that he did the Claimant answers first of all in the affirmative when testifying at the investigation albeit he changes his mind on that during his closing statement.

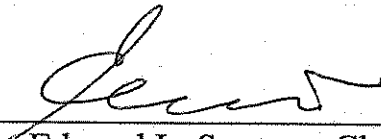
Upon the record before it the Board has no alternative but to conclude that the Claimant to this case requested payment for work not done. In his closing statement he states that he made an error. As he puts it he "...made a mistake..." The Board cannot overlook the fact that the Claimant acted in the capacity of a foreman and that he was responsible not only for his own hours but also those of the crew working under him. Scrupulousness in reporting time worked is a fundamental tenet of the employment status. There is such abundant arbitral precedent on this point that specific cases need not be referenced.

On some issues in this case there is a conflict of testimony between that of the road master and that of the Claimant. The Board has insufficient evidence before it to conclude that the road master had vested interest to do other than testify credibly at the investigation. On merits the claim cannot be sustained.

The Claimant has considerable tenure with the Carrier. A review of his personal record, however, which Boards such as this may reasonably factor in their rulings as an extenuating circumstance, shows that the Claimant's record is not without blemish. He has been assessed suspensions four times in the past. In two instances the Claimant received suspensions for falsely claiming payments which were found to have been improper. Unfortunately this pattern persisted up to and including the instant case. Reasonably applying the principle of progressive discipline the Board is unable to conclude that the Carrier's disciplinary determination in this case was arbitrary or capricious.

Award

The claim is denied.



Edward L. Suntrup, Chair &
Neutral Member

Date: 6/20/07