

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6672

Parties to Dispute:

UNITED TRANSPORTATION UNION

-and-

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY CORPORATION

OPINION & AWARD

Case No. 11
Claimant R. J. Hines

EMPLOYEE'S STATEMENT OF CLAIM:

"This will present claim and appeal in behalf of Willmar, MN conductor R. J. Hines for payment for all time and earnings lost due to sixty (60) day suspension, June 27, 1997 through and including August 27, 1997, pay lost due to investigation April 28 and June 11, 1997 and total record clearance of the entire incident."

FINDINGS

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

The record reflects that on March 21, 1997, Claimant Hines had been assigned to work SDK8101 as conductor, operating at 2054. Fellow crewmembers were Amy Malvin and Ron Monson, although Monson had already announced he planned to take personal leave that day. Several hours before he was scheduled to report Claimant contacted the crew office to indicate that he might be laying off sick but was reluctant to do so because of the possibility that the job might be annulled. The crew caller advised him that the job was scheduled to operate and if he did lay off there were no qualified conductors on the extra board to fill his position. At 2050 Claimant was called for the job and stated he was unable to work. In view of the severe crew shortages at the time, the Trainmaster annulled the job at 2054.

It is undisputed that on March 24, 1997, aware that that the job had been annulled due to the absence of his brakeman, Claimant submitted a ticket claiming pay for the annulled assignment stating "Job SDK8101 not called annulled" and making no reference to his unavailability due to sickness. That action triggered Carrier's 60-day disciplinary suspension, timely challenged by the Organization.¹

The Organization first asserts a procedural argument, contending that Carrier's handling of the claim process was fatally flawed as a result of its initially convening the formal investigation on April 28, 1997, and then being required to schedule a second session on June 11, 1997 after it was discovered that testimony from the first session had been partially lost as a result of a tape recording failure. That arrangement, the Organization argues, effectively represents two hearings, depriving Claimant of his contractually guaranteed right to a fair hearing.

The Board rejects this argument on grounds the record clearly reflects it was not raised in case handling on the property.

On the merits, while there is disagreement at the margins on the question of how pay claims are to be filed, on the overarching issue the matter is straightforward and governed by well recognized, longstanding principles. What employees state on their claims for compensation must be true and accurate. In this instance, Claimant admits that he misrepresented facts in stating that he was not called, but implies it is Carrier's obligation to run down the facts.

That formulation is in serious error. Arbitral precedent in the railroad industry for generations has held that employees have an obligation in the first instance to provide their employer's with correct information in support of their tickets for compensation, and that failure to do so may subject them to discipline. See, e.g., First Division Award No. 24277 (Brotherhood of Locomotive Engineers & Southern Pacific Transportation Company) (Muessig) (1993) (sustaining dismissal of engineer for submitting fraudulent time returns.)

We conclude this matter represents a case of patently false pay reporting. As Claimant clearly concedes, his job was annulled *after* he was called and laid off sick. Although not

¹ The record suggests this discipline was subsequently converted to a Level S thirty (30) day record suspension and three years probation.

OPINION & AWARD

Case No. 11- Public Law Board 6672

available for the service for which he claimed pay, he nonetheless advanced time claims for himself and for Mr. Monson. This attempt to defraud was significant misconduct, warranting the discipline imposed.

A W A R D

The Claim is denied.



**James E. Conway
Chairman and Neutral Member**



**Roger A. Boldra
Carrier Member**



**J.L. Schollmeyer
Employee Member**

**Dated: Great Falls, VA
February 10, 2009**