

**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. 36  
Claimant P. R. Black

**EMPLOYEE'S STATEMENT OF CLAIM:**

“This will present claim and appeal in behalf of Seattle, WA Conductor P. R. Black for pay for all time lost, including attending investigation and complete record clearance, including probation period, account Level S thirty (30) day deferred record suspension, for alleged violation of Rule 1.6 of the General Code of Operating Rules (alleged dishonesty in submitting trip tickets which resulted in alleged unremitted overpayment for the period of September 13, 2001 through April 16, 2003.”

**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.

According to the record of claim handling on the property, Claimant Black, hired as a trainman in 1977, was charged with altering a train symbol from deadhead to working train on a-number of occasions in 2000, thereby generating significant overpayments to himself. Following investigation into the matters on June 23, 2003, Carrier determined that the evidence adduced at investigation supported the dishonesty alleged and imposed the Level S 30-day deferred suspension here challenged by the Organization.

Carrier represents that under its pay system, when a conductor is called for deadhead service its computer calling system creates a ticket bearing a train number that denotes the service as deadhead. In the instant case, it asserts, Claimant on more than a dozen occasions from March through mid-April, 2000, altered train symbols from deadhead to a

working freight symbol and claimed actual miles on the runs. Additionally, he claimed Code 32, short crew allowance, payable only when a crew works with less than a conductor and two brakemen, even though not entitled to that pay in his deadhead service. As a result of his actions Claimant pocketed over \$1500 which he had not earned.

The Organization sets forth several arguments in Claimant's defense. First, it contends that Carrier's original notice of investigation was untimely, having been sent on May 15, 2003, 10 days after first knowledge in violation of Rule 40(a). That Rule reads in part:

"Notice of such investigation, stating the known circumstances involved, shall be given to the employee in writing within five (5) calendar days of the date that knowledge of the offense or irregularity has been received by the Superintendent, Trainmaster or Yardmaster in charge and investigation will be held within five (5) calendar days of such notice."

First knowledge in this instance, however, dated not from the several earlier dates the Organization identifies, including the date of the verbal report of suspicious conduct received from another employee, or the date General Director Transportation Audits and other compensation systems managers knew of the irregularities, or the date General Director of Transportation Red Fay was advised that Corporate Audit Services had completed its review of the pay discrepancies, but from May 12, 2003, date when Fay received the written files and summaries of the discrepancies at issue from Carrier's Director TY&E Compensation System. Carrier's notice of investigation was issued three days later and was thus timely under the Rule.


The Organization further contends Carrier's failure to produce additional copies of auditor's reports for the period of September 13, 2001, through April 16, 2003, in advance of the hearing; failure to provide copies of certain call slips; and failure to summon certain other trainmen to attend Claimant's investigation deprived Claimant of contractual due process. Under the circumstances presented, with the auditor's reports clearly irrelevant, Claimant not disputing his actions on the dates covered by the additional call slips and the reasons for the presence of Trainmen Carrigan and Boersma never disclosed and neither of them appearing to have any first-hand knowledge of the events at issue, the Board finds no serious due process issues presented. We note in passing, however, that despite not


receiving an explanation for what these two employees might contribute, Carrier offered to release both at the Organization's invitation.


It appears to the Board apparent from both Claimant's own testimony and from a review of the numerous tickets received in evidence reflecting claims for actual miles deadhead and short crew allowances that that Claimant was responsible for the rule violation charged. Claimant had been a trainman since 1977 and thus had been submitting time slips for many years prior to embarking on his system of defrauding his employer. The inexperience cited by the Organization in defense of these actions, accordingly, is not a key that fits this door. Indeed, the only genuine issue presented here involves the severity of the discipline assessed. In view of the fact that Carrier granted leniency here for what was plainly a dismissal offense, we find no basis for disturbing that judgment.

A W A R D

The Claim is denied.

  
James E. Conway  
Chairman and Neutral Member

  
Roger A. Boldra  
Carrier Member

  
Jay L. Schollmeyer  
Employee Member

Dated: Great Falls, VA  
March 15, 2009