

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (formerly Western Pacific)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (UP):

On behalf of E. E. Smith, Jr., for reinstatement to service with all wages and benefits restored beginning July 28, 1987, and continuing until this dispute is settled, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 68, when it dismissed him without cause on July 24, 1987. Carrier file 860065."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This is a discipline case involving a Test Foreman with approximately 8 years service who was charged with Falsification of Expense Account and dismissed from the service following formal investigation held on July 18, 1986.

The Organization raises certain procedural issues which must be addressed before discussing the merits. The Organization contends the Carrier's Notice of Charge incorrectly included General Rule "L" and mislabeled Rule 607(4) as "Rules 607 and 4". Following the Investigation, the Carrier deleted any reference to Rule L as being violated, and during the Investigation satisfactorily explained the typographical error concerning Rule 607 (4). We do not feel either of these matters prejudiced Claimant's contractual due process rights at the Investigation.

The successful resolution of the merits hinges on the vital question whether Claimant falsified his expense account received on June 29, 1986, as Carrier asserts, or whether Claimant simply made an honest mistake, as argued by the Organization. Unfortunately, the transcript is not particularly helpful on this point. The testimony establishes the fact that Claimant's oversight in failing to sign his original expense account resulted in the submission of a new expense account at Carrier's request, which was received on June 29, 1986. The Claimant asserts he did not retain a copy of his original form so he immediately submitted the expenses from memory without waiting for the return of his original form. Unfortunately, the transcript does not contain a copy of the original expense account so it is not possible to determine whether there is any substantial variance in the amounts requested on the particular dates involved herein. In any event, it is clear from the record that on the dates specified in the charge, Claimant did not have the right to recover the expenses claimed.


It is apparent the Claimant committed a series of errors in this case, each compounding the result. However, we are not convinced the record contains substantial evidence proving the charge of fraud. Neither are we satisfied that Claimant's conduct deserves to be categorized as an honest mistake. It was more in the nature of a careless and indifferent disregard for the truth. Although the Claimant's past record leaves much to be desired, it is our decision he should be returned to service, with seniority unimpaired, but without compensation or benefits claimed, on a last chance basis.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989.