

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32208  
Docket No. MW-32820  
97-3-96-3-140**

**The Third Division consisted of the regular members and in addition Referee Jonathan S. Liebowitz when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(CP Rail System (former Delaware & Hudson Railway  
( Company, Inc.)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The dismissal of Trackman S. Perry for violation of Rules 21.5 and 21.6 in connection with alleged falsification of his personal expense account for the month of May, 1994 was arbitrary, capricious and unwarranted (Carrier's File 8-00003 DHR).**
- (2) As a consequence of the aforesaid violation, the Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage and benefit loss suffered.”**

**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 employee 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.**

**On June 27, 1994, the Assistant to the General Manager directed the Claimant to attend a formal Investigation as follows:**

**"The purpose of this Investigation will be to determine your responsibility surrounding your alleged violation of Norac Operating Rule D, and for violation of Rules 21.5 and 21.6 of the Collective Agreement between the BMWE and the Delaware and Hudson Railway Company, Inc., for allegedly falsifying personal expense account for the month of May 1994."**

**By letter dated August 18, 1994, the Carrier notified the Claimant that he had been found guilty of the charges and was dismissed from the Carrier's service.**

**Initially, the Organization contends that the Carrier failed to comply with Rule 25.8 which states that a decision shall be rendered within 21 calendar days following the completion of the Investigation. The record shows, however, that the Carrier's decision was placed in the mail on August 18, 1994 within 21 calendar days of the July 28, 1994 Investigation. The Board does not find a violation by the Carrier of Rule 25.8.**

**With regard to the merits, the record shows that Claimant was assigned as a Trackman to the Gauging Gang, that he submitted a personal expense account for May 1994 in which he claimed travel time from his home in Clayville, New York, to the job site at Ticonderoga, New York, and that he claimed more mileage than the most direct route would permit. Claimant also claimed travel allowance while traveling during regularly assigned working hours. Claimant submitted a personal expense account for payment for travel during which he drove a company vehicle home. Claimant asserted that he had been told by the Production Supervisor that he would not get overtime, but that he would get expenses. Claimant claimed 302 miles at \$.21 per mile, and \$70.00 travel allowance to which he was not entitled under Carrier Rule 21.5.**

**The record reveals that Claimant admitted during the Investigation that he claimed the travel allowance to which he was not entitled and mileage in excess of that required to reach his destination. Although Claimant denied any wrongdoing and any intention to defraud the Carrier or to submit a falsified expense account, the record contains substantial evidence to support the Carrier's conclusion that his actions were intentional and not in error. The record shows that the correct mileage for the trip**

involved 191.2 or 193.8 miles, depending upon the route, which was verified by a Carrier officer. The travel allowance of \$70.00 was not payable because Claimant was traveling during his work hours.

The Organization argues that Claimant, who had more than 24 years of continuous service with the Carrier, was presented with no opportunity to correct his error, and did not receive guidance from the Carrier as to the expenses claimed. The Organization argues that Claimant had no intention of falsifying his expense account or of committing any wrongful conduct in May 1994. The Organization also argues that these were inadvertent errors and that the Claimant should not have been disciplined at all.

Falsifying an expense report is a dishonest act which constitutes a fraudulent claim for reimbursement of funds by the Carrier. Thus the Organization's argument that dismissal was unjust and capricious is not substantiated by the record. Because of the seriousness of the offense, Claimant's length of service cannot serve as a mitigating factor. Furthermore, Claimant had a record of prior discipline. Claimant received 20 demerits on November 18, 1992 for violation of Norac Rules D and L and 20 demerits on September 16, 1993 for violation of Norac Rules S, 166, 800 and 997. Under the Carrier's demerit system, the discipline for this infraction would be discharge. The Board finds that the proved infractions are serious and warrant termination in and of themselves.

In Third Division Award 22119, the Board held:

**"While we are not unmindful of the serious and final nature of discipline by dismissal neither can we forget that dishonesty in all of its shapes and sizes is a serious matter which, when proven, this Board has repeatedly held to be sufficient cause for dismissal."**

Accordingly, the record demonstrates no basis for this Board to overturn the decision reached by the Carrier.

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**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 17th day of September 1997.**