

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32593
Docket No. MW-32677
98-3-95-3-614

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Southern Pacific Transportation Company**
(**Eastern Lines**)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s decision to withhold Welder J. R. Magallanez from service and his subsequent dismissal for alleged violation of Rule 1.6 of the Safety and General Rules in connection with the charge of ‘. . . dishonesty in claiming and/or accepting pay to which you were not entitled between May 1, 1994 and February 22, 1995....’ was arbitrary, capricious, without just and sufficient cause, on the basis of unproven charges and disparate treatment (System File MW-95-83/MW D95-13 SPE).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated with all seniority, vacation rights and any other rights accruing to him unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered beginning February 22, 1995 and continuing until he is returned to service.”

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.

The record evidence establishes that the Claimant received \$8,476.75 as per diem allowances between the dates of May 1, 1994 and February 22, 1995; and that these monies represented inadvertent overpayments.

The Board is persuaded that the Claimant knew or should have known that he was not entitled to such payments, and the record indicates that the Claimant acknowledged that he should not have accepted such payments. Therefore, the Carrier properly concluded that the Claimant was guilty of "dishonesty."

The record further reflects that the Claimant (1) had an unblemished service record with the Carrier beginning in September 1972, (2) held seniority as a Welder beginning in July 1997 and (3) upon being notified that he had used an "improper supervisor number" in claiming per diem allowances he "promptly" notified management of the error. While it is clear that the Claimant should have acted earlier, the above mitigating considerations as well as the fact that other employees have been given the opportunity to make restoration persuades this Board that the Claimant's termination should be converted to a disciplinary suspension provided he agrees to reimburse the Carrier for the overpayments made through the medium of payroll deductions.

Accordingly, the claim will be sustained, only to the extent that the Claimant will be reinstated with seniority and all other rights unimpaired, but without backpay, if he agrees to reimburse the Carrier for the received overpayments through a reasonable schedule of payroll deductions.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 22nd day of May 1998.