

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37653  
Docket No. MW-38188  
05-3-04-3-106

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

(Brotherhood of Maintenance of Way Employees  
**PARTIES TO DISPUTE:** (  
(Soo Line Railroad Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [suspension from service for a period of ten (10) days] imposed upon Mr. G. Bell on August 16, 2002 for alleged violation of Company Policy, GCOR, Rule 1.6 Conduct, Safety Policy Handbook General Rule O and the expense account instructions in connection with an expense reimbursement claim for June 10, 2002 was without just and sufficient cause on the basis of unproven charges and in violation of the Agreement (System File D-02-120-001/8-00437).
- (2) As a consequence of the violations referred to in Part (1) above, the Carrier shall now expunge this discipline from Mr. G. Bell's record and he shall be compensated for all lost wages beginning August 26, 2002 through September 6, 2002.”

**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.**

**At the time of the incident that led to the instant suspension, the Claimant held seniority in various classifications within the Maintenance of Way and Structure Department dating from September 10, 1979. He was assigned as a Special Machine Operator (SMO). In addition, he was serving as the Assistant General Chairman for the Organization.**

**It appears to be undisputed that the Claimant's assignment as an SMO requires that he live away from his residence throughout his regular workweek and, as such, is afforded lodging, meals and travel expenses. The Claimant was also a voluntary member of the Carrier's Safety and Health Committee and, as such, attended committee meetings as scheduled by the Carrier. On June 10, 11, 12, and 13, 2002, while assigned as an SMO, the Claimant attended a committee meeting in White Bear Lake, Minnesota. He arranged to stay with a friend who lived in the vicinity of the committee meetings. As a result, he did not incur any lodging expenses on these dates. Nevertheless, the Claimant applied for the \$15.00 daily travel allowance for those dates.**

**By letter dated July 16, 2002, the Carrier advised the Claimant that an Investigation would be held ". . . for the purpose of developing all facts and circumstances and placing responsibility, if any, in connection with your alleged attempt to claim reimbursement of expenses, in which allegedly not entitled. Alleged false claims for expenses included but not exclusive to the following: electing to claim \$15.00 travel allowance in lieu of lodging, while at the same time electing 298 award reimbursement of expenses on June 10, 11, 12 and 13 in violation of Memorandum No. 21, Letter Of Understanding dated April 12, 2000 as contained in Schedule Agreement dated December 31, 2001, and as subsequently amended. Claiming expenses in which you are not entitled to is a violation of company policy, G.C.O.R. Rule 1.6 Conduct, Safety Policy handbook General Rule O, and also the expense account instructions previously provided."**

**The Hearing was held on July 29. By letter dated August 16, 2002, the Carrier notified the Claimant that "Testimony developed during the investigation clearly established your responsibility in connection with the charges. Carrier**

Exhibit #2, your submission for expenses for the month July 10, 2002 clearly shows that you submitted a claim of \$15 for mileage in lieu of lodging. Carrier exhibit #2 for July 10 clearly shows that you also claimed the 298 board award for \$21.25 as well. Exhibit #5, Memorandum No. 21 of the Schedule Agreement clearly states: 'It is further understood that should a special machine operator elect 298 board Award reimbursement of expenses, he will not be entitled to elect a \$15.00 travel allowance for each workday he would have otherwise been entitled to lodging reimbursement. . . .'"

The Organization claims that the discipline was unwarranted. It contends that the burden of proof in a discipline matter such as this is on the Carrier and that burden of proof has not been met. It further contends that in addition to not meeting its burden of proof, the Carrier engaged in two procedural violations. First, it failed to issue its decision within 15 days as required by Rule 20(b) and second, it denied the Claimant his contractual due process rights to a fair Hearing notice, because the same Carrier official who acted as Hearing Officer also issued the discipline following the Hearing. According to the Organization, the Carrier was unable to prove that the Claimant was guilty of any alleged infractions and requests that the discipline be expunged and that the Claimant be compensated for all lost wages.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Investigation in accordance with the requirements of the Agreement. The Carrier considers the Claimant guilty as charged. According to the Carrier, a review of the transcript as developed during the Investigation reveals that the Claimant fraudulently requested the \$15.00 daily travel allowance. In addition, the Carrier contends that it engaged in no procedural violations.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325, Third Division Award 16166.)

After a review of the evidence, the Board finds that the decision was not rendered by the Carrier in a timely manner. After an Investigation, the Carrier must render its decision within 15 days. In the instant case, the Investigation took place on July 29 and the decision was rendered on August 16, 2002, an elapsed period of 18 days. This is clearly beyond the time limit allowed. See Public Law Board No. 6552, Award 1.

Because the Board determined that the decision was issued in an untimely fashion, we find that the claim must be allowed. The suspension will be expunged from the Claimant's record and he will be compensated for wages lost for the ten days of his suspension. The Carrier asserts that damages must be limited to straight time wages, while the Organization claims that overtime must be awarded as well. After a review of precedent submitted by the Carrier and the Organization respectively, the Board concludes that the Claimant shall be reimbursed for all lost wages, including any overtime. As indicated in Interpretation No. 1 to Third Division Award 33024:

"The purpose of an Award of compensation for lost wages is to place the Claimant in the economic position he would have occupied had he not been wrongfully dismissed...."

In addition, in Third Division Award 33264 the Board stated:

"When read together, the Interpretations hold that backpay to which an employee withheld from service is entitled includes overtime which he or she would have worked had they not been withheld from service...."

Based on this precedent, the Claimant shall be made whole for any and all lost wages, including any overtime to which he would have worked had he not been suspended.

### AWARD

Claim sustained.

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**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 7th day of December 2005.**