

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39020
Docket No. MW-39452
08-3-NRAB-00003-060108
(06-3-108)

The Third Division consisted of the regular members and in addition Referee Sinclair Kossoff when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S - thirty (30) day record suspension] imposed upon Mr. E. Yalowizer under date of January 5, 2005 for alleged violation of Rule 1.6 of the BNSF Maintenance of Way Operating Rules in connection with alleged dishonesty and falsification of expense related claims, August 23, 2004 through October 13, 2004 while assigned as a machine operator headquartered at Crawford, Nebraska was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File C-05-S090-3/10-05-0116(MW) BNR].
- (2) As a consequence of the violation referred to in Part (1) above, Mr. E. Yalowizer shall now receive the remedy prescribed by the parties in Rule 40(G).”

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 Organization contends that the discipline here administered was in violation of Rule 40 of the Agreement because the Investigation was held more than 15 days from the date of the occurrence. The Organization contends that under Rule 40 of the Agreement the Investigation should have been held no later than September 13, 2004, because the Claimant was charged with falsifying expense claims from August 23 through October 13 and the Carrier had knowledge of the initial submission of a mileage claim on August 29, 2004. The Investigation was first scheduled to be held on November 2. By mutual agreement it was postponed until December 1, 2004.

Roadmaster T. J. Huddle testified that around October 19 the Claimant brought him his (the Claimant's) expense sheet, which showed that the Claimant charged the Carrier three meals a day for every day that he worked and, in addition, had included expenses for working away from his headquarters point. The Roadmaster told the Claimant that he did not think that he (the Claimant) was entitled to such expenses. The Claimant assured the Roadmaster that he was. On or about October 20, 2004, the Roadmaster requested Assistant Roadmaster K. W. Miller to check the mileage that the Claimant was charging and if he was charging for motels. According to the record the Assistant Roadmaster completed the assignment on the same day, October 20. A letter was also sent on October 20 to the Claimant, notifying him to appear for an Investigation on November 2, 2004, "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged dishonesty and falsification of expense related claims August 23, 2004 through October 13, 2004, while assigned as a Machine Operator, headquartered at Crawford, Nebraska."

The evidence shows that the Claimant first submitted mileage and motel reimbursement claims to the Carrier by computer on August 30, 2004. The computer submissions thereafter continued on a regular basis through October 19. The following submissions were received by the Carrier in the month of October 2004: October 4 for expenses on October 1, 2, 3, and 4; October 6 for expenses on October 5 and 6; October 13 for expenses on October 7, 8, 9, 10, 11, and 12; October 19 for expenses on October 13.

It is not clear from the record precisely what information was included in the computer submissions. For example, it does not appear whether only dollar totals were submitted or also information regarding the city or town where the Claimant lodged each night and the cities and towns between which he traveled and for which he sought mileage reimbursement. Unless such detailed information was submitted by the Claimant it would not be reasonable to expect the Roadmaster to know specifically for what the Claimant was seeking reimbursement so as to charge the Carrier with knowledge of any alleged improper travel and lodging claims and start the 15 day limitations period running under Rule 40 for convening an Investigation.

Even, however, if we assume that the Claimant's periodic computer submissions for travel reimbursement contained detailed information, the evidence does not establish that the Carrier exceeded the 15 day period for convening an Investigation so as to require a reversal of the discipline imposed. Both the Roadmaster and the Assistant Roadmaster testified that the Roadmaster is supposed to check the expenses turned in by employees every two weeks or semi-monthly. According to the Roadmaster's testimony, he became suspicious of the Claimant's reimbursement claims for motels and mileage on October 19, 2004.

The Claimant's first mileage and lodging reimbursement claims for the month of October were submitted by computer on October 4, 2004. Thereafter, as noted above, he submitted travel reimbursement claims electronically on October 6, 13, and 19, all for mileage and motel expenses incurred in the month of October. There is no evidence that the Roadmaster checked, or had any knowledge of, the Claimant's travel reimbursement claims for October prior to October 19, 2004. In view of the unchallenged evidence that travel reimbursement claims are reviewed every two weeks, or semi-monthly, it is reasonable that the Roadmaster would not

have checked the Claimant's travel reimbursement claims sent in between October 4 and 19 prior to October 19. During that period of time the Claimant submitted mileage and motel reimbursement claims for the work period October 1 through October 13, 2004.

It is not disputed that on October 20, 2004, the Roadmaster instructed the Assistant Roadmaster to check out the Claimant's travel reimbursement claims.¹ Because an Investigation was set to be held within 15 days of October 19, 2004, any discipline administered to the Claimant based on violations committed by him in the month of October 2004, related to travel reimbursement claims would not have been improper based on the 15 day limitations period of Rule 40 regardless of the situation with respect to violations committed in earlier months. This is so because the earliest that the Roadmaster had any knowledge of the Claimant's travel reimbursement claims for the month of October was on October 19, 2004. The Claimant requested reimbursement for travel expenses for 13 days in the month of October.

The plain language of the applicable Agreement provision, known as the M3 provision, entitled the Claimant to mileage between the headquarters location, which in this case was Crawford, Nebraska, and his work site. The Claimant chose to stay in Hot Springs, South Dakota, for his own convenience, instead of Crawford, Nebraska, and this resulted in far greater mileage expense charged to the Carrier than was permissible. The Claimant did not dispute that he knew that his headquarters location was Crawford, Nebraska. He defended his action, however, on the basis that when he had previously worked as a Machine Operator in the area, he had also stayed in Hot Springs. He admitted, however, that on the prior occasion Machine Operators were not headquartered in Crawford. If the Claimant wished to stay at a motel farther than his headquarters location to his work site, he should have obtained prior permission from his Roadmaster to do so. He made no effort to obtain such permission in this case. The Carrier properly viewed the Claimant's travel reimbursement claims as excessive.

¹Citing a transcript reference, the Organization argues that the October 20 date was supplied by the Hearing Officer in a leading question. However, the Hearing Officer was merely referring to the date independently provided by the Assistant Roadmaster at two different times in his prior testimony.

In his closing statement, the Claimant complained that the first time that he was told that the Carrier did not agree with the mileage he was turning in was on October 19, about one and one-half months after he began submitting his travel reimbursement claims. "If he had told me that he didn't agree with the mileage I was driving or the lodging I was using, I would have stopped turning it in and talked to the Union about filing a claim for it." The Claimant has things reversed. It is the employee's responsibility to submit proper travel reimbursement claims in the first place. It should have been obvious to the Claimant that requesting travel reimbursement from a location that was much farther from his work site than his headquarters location was at least questionable and should not be done without asking the Roadmaster if it was permissible.

The Board finds that the Claimant submitted travel expense reimbursement claims for excessive amounts for 13 days in October 2004, and that an Investigation was timely convened in accordance with the requirements of Rule 40 for these violations. Those violations were a sufficient basis for the 30-day record suspension administered in this case. There is insufficient evidence in the record for the Board to determine whether the Investigation was timely convened with respect to the alleged violations committed prior to October 1, 2004.

AWARD

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 22nd day of April 2008.