

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37474
Docket No. MW-38044
05-3-03-3-424**

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension from service beginning October 21 and ending October 25, 2002] imposed upon Mr. L. Chadwick for alleged violation of Company policy, GCOR Rule 1.6 Conduct and Safety Policy Handbook General Rule O, in connection with an alleged attempt to claim reimbursement of expenses in which allegedly not entitled 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, was arbitrary, capricious, unwarranted an in violation of the Agreement (System File D-02-120-003/8-00438).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. L. Chadwick shall now ‘. . . be made whole for all lost wages, and any and all expenses incurred while attending this hearing, and that his record be expunged of said charges.’”**

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 September 23, 2002, an Investigation was conducted to determine the Claimant's responsibility, if any, in connection with his alleged attempt to claim reimbursement for lodging and meal expenses not actually incurred in June and July 2002, while assigned as a Laborer on an anchor crew that had been part of a mobile production rail gang. At the time of the incident, the Claimant had accumulated approximately six years of service within the Carrier's Maintenance of Way and Structures Department, and had no prior discipline on his record.

By letter dated October 7, 2002, the Claimant was informed that the testimony and evidence adduced during the Investigation substantially established his responsibility in connection with the charges. As a result, the Claimant was assessed a five-day actual suspension, as set forth in Part (1) of the claim, above.

The Organization contended that during the Investigation, the Carrier presented no evidence to prove that the Claimant's actions were "intentional, willful and a premeditated attempt to defraud the Carrier." As a result, the Carrier failed to sustain its burden of proof and the discipline should be entirely expunged from the Claimant's record, because such discipline was assessed without "just and sufficient cause." Moreover, the Claimant must be made whole for the days on which he served the disciplinary suspension, the Organization argued.

The Organization furthermore asserted that through the testimony obtained on the record, it was shown that the Claimant had not been afforded any training or instruction on the proper procedures for completing the expense reimbursement forms associated with production gang work, a mitigating factor in this matter. In addition, during direct and cross-examination, the Claimant admitted he had rushed through the process of completing the forms, and had made careless mistakes, or "overlooks." Again, as stated above, the Organization stressed that the Carrier did not prove that the Claimant deliberately intended to defraud the

Carrier of expense monies, but showed only that he simply made mistakes as a result of his admitted haste and the Carrier's lack of training him to fill in the forms.

The Carrier argued that the Claimant's admissions were substantial evidence of his guilt as to each of the proffered charges. In addition, the Carrier pointed to Audit Supervisor Sutherlin's detailed testimony which, in its view, was incontrovertible proof that on several dates in June and July 2002, the Claimant either over-claimed, or claimed without having any entitlement whatsoever, lodging and/or meal expenses which he clearly did not incur.

With respect to the issue of expense account training, the Carrier contended that the Claimant admitted at the Investigation to having had received training in a group setting regarding the proper procedures for completing expense account forms. Thus, Track Program Supervisor Balmer's testimony that the Claimant had been trained was unrefuted, even if that supervisor had not himself specifically delivered the training. As such, Balmer's testimony was strong evidence the Claimant had been trained on the proper methods for completing the forms, and that the forms Claimant did turn in, which contained numerous errors, exposed the Carrier to financial loss and undue enrichment for the Claimant, the Carrier emphasized.

In the Carrier's view, the proven charges were serious, regardless of whether the requested reimbursements were the result of the Claimant's carelessness or a deliberate attempt to obtain expense reimbursement monies through dishonest conduct, it further submits. Therefore, the Carrier stressed that, in light of the proven charges, the assessment of some discipline was clearly warranted, and the five-day suspension was commensurate with the proven offenses. Furthermore, it pointed out that there were no due process or other procedural errors which required a removal of or change in the discipline. As a result, the Carrier urged the Board to uphold the Carrier's assessment of discipline in full, and deny the Organization's claim.

The Board carefully reviewed the parties' Submissions, the Investigation transcript and attached exhibits and finds substantial evidence of the Claimant's guilt of the charges. At the outset, we note that, contrary to the Organization's contention, we believe that the Carrier was within its rights to undertake a formal Investigation of this matter pursuant to the Investigation/Hearing processes outlined

in the Agreement. Despite the fact that the record shows that the Carrier had attempted, without success, to contact the Claimant about the expense account irregularities when they were first discovered, there is no evidence that by formally proceeding with an Investigation, the Carrier was arbitrary or was in a rush to exact discipline in this matter, as the Organization has argued.

Second, from our close review of the record, particularly the testimony and documentary evidence presented by the Audit Supervisor and, as the Claimant himself admitted by his own testimony, we are convinced that the Claimant did not fill out the forms correctly. He also had sufficient training by virtue of the group sessions, we find.

However, as the Organization argued, there is no evidence in the record which establishes that the Claimant sought to deliberately defraud the Carrier of expense monies on the dates in dispute. Thus, while we find that the charges were proved by substantial evidence and testimony of record, corrective as opposed to punitive discipline is warranted in this case. As a result, we hold that, under the factual circumstances, the five-day suspension imposed upon the Claimant was too harsh, and that a three-day suspension would be more consistent from the standpoint of a corrective disciplinary approach.

It is also clear from the record that when confronted with each arguably improper reimbursement request, the Claimant stated that he had submitted two months of reimbursement requests at one time in order to save time. He frankly admitted, we find, that in his haste, he had made several mistakes, or "overlooks," as subsequently identified through the Carrier's audit of the gang's expense records. The Board emphasizes that it does not condone Claimant's admitted carelessness. Under some circumstances, attributing the errors to carelessness could be construed as self-serving, we note. The Claimant frankly owed up to his errors when they were pointed out to him and seemed to be a credible witness. His lack of intent to defraud is clearly a strong factor in mitigation, we therefore find.

Again, from the record, we find that the Claimant's acknowledgement of his responsibility for the mistakes and his assurances that, in the future, he would prepare his expense reimbursement requests with more care, were sincere. We reiterate there is no independent evidence in the record that causes the Board to doubt his candor in that regard. Thus, given the lack of any probative evidence that the Claimant's behavior was intentional and in light of the above mitigating factors,

which also include the Claimant's clean disciplinary record at the time of this offense, we rule that the discipline shall be reduced to a three-day actual suspension.

The Claimant's disciplinary record shall be accordingly modified to reflect the Board's reduction of the discipline, and he shall be compensated on a make-whole basis for two days of the five-day suspension previously assessed, if more than three days' time was actually served by the Claimant. The award to that effect follows.

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 19th day of April 2005.