

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42843  
Docket No. MW-42706  
18-3-NRAB-00003-140382**

**The Third Division consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Soo Line Railroad Company (Former Chicago,  
(Milwaukee, St. Paul and Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. J. Brown by letter dated August 2, 2013 for his alleged violation of GCOR Rules 1.6 Conduct; 1.13 Complying with Instruction; Policy 6308 Fraud (Corporate 4140) and Policy 6309 Expenses in connection with his alleged “... claiming meals on May 1, August 1, and August 2, 2012 while on vacation \*\*\*” was on the basis of unproven charges, arbitrary, capricious, excessive and in violation of the Agreement (System File D-43-13-620-01/8-00544).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Brown shall be reinstated to service with seniority rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated ‘... for all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled \*\*\*’.”**

**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 Carrier issued a Notice of Investigation letter dated July 9, 2013, which gave notice of an Investigation in to the following incident:**

**“Alleged fraudulent expense accounts submitted when making claim for reimbursement for expenses while on Annual Vacation for the months May, August, 2012 and discovered during a recent audit and received in my office on July 5, 2013.”**

**The Hearing was held on July 19, 2013. Following the Investigation, the Claimant received a Discipline Notice dated August 2, 2013, finding the Claimant in violation of GCOR, Rule 1.6 Conduct, 1.13 Complying with Instructions, Policy 6308 Fraud and Policy 6309 Expenses resulting in dismissal of the Claimant under the CP Policy. The Organization appealed the Carrier’s decision by letter dated September 11, 2013. The Carrier denied the Organization’s appeal on September 16, 2013. A formal conference was held on December 11, 2013. The claim was appealed and now is before the Board for a final resolution of the claim.**

**The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:**

- “1) Did the Claimant receive a full and fair investigation with due notice of charges, opportunity to defend and representation?**
- 2) If so, did the Carrier establish by substantial evidence that Claimant was culpable of the charged misconduct or dereliction of duty?**
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory or unreasonably harsh as applied to the facts and circumstances giving rise to this claim?”**

The Carrier contends that the Claimant was afforded a fair and impartial Investigation, and the Claimant was afforded his due process rights. The Carrier asserts that the Agreement does not mandate that the Hearing Officer issue the Notice of Discipline. Discipline is assessed by the Carrier. The Carrier contends that it met its burden of producing substantial evidence of the Claimant's guilt. The Carrier asserts that the Claimant was trained on how and when to submit expenses. The evidence established that the Claimant claimed a meal expense reimbursement on May 1, August 1-2, 2012 while Claimant was on vacation and not due expenses. The Carrier further contends that the dismissal was justified based on the seriousness of the offense, and the discipline was not excessive, arbitrary or an abuse of discretion

The Organization contends that the Carrier disciplined the Claimant unjustly, and thus in violation of Rule 20 of the Agreement, when it found the Claimant guilty on the basis of a decision made by someone other than the Hearing Officer who could make credibility finding. At issue at the investigation was whether or not the Claimant had been dishonest in claiming \$25.00 meals on three different occasions in a three month period. The Claimant acknowledged that the claims were improperly submitted as an oversight. In fact, another coworker completed two of the entries, and the Claimant did not thoroughly review the form. The Organization asserts that the hearing officer was in best position to judge the credibility of the Claimant but failed to make a credibility finding. The Carrier asserts that the Carrier has a heightened burden of proof since the charge involves dishonesty and fraud. The Organization contends that the Carrier failed to meet this heightened burden. In addition, the Organization seeks a full remedy for losses sustained by the Claimant as a result of the unjust dismissal.

The Claimant was flagged as a result of the broad audit which compared his payroll records to his expense forms for the entire calendar year. Based upon the anomalies for the month of May and August in the Claimant's records, an individual audit was done. There were no anomalies in the remainder of the calendar. The May expense form indicated as follows: "5-1, vacation, distribution, gang, Artos Motel, Harvey". The Claimant claimed \$25.00 food expense on that date. The Claimant submitted food expenses in the amount of \$25.75 for August 1, 2012 and August 2, 2012 while he was on vacation for those dates. Another employee completed the expense form for the Claimant for August. Although Claimant signed the form verifying its accuracy of the claim request, the Claimant glanced over the document. The Claimant stated that it was an oversight the food expenses were submitted for his

**vacation days. The Claimant stated that he did not knowingly misrepresent his expenses to gain benefit.**

**The Manager testified that he approved the May and August expenses in error. The Manager explained that typically he reviews the expense forms, and if a discrepancy is found, he would return it to the employee to correct the same. This did not happen in this instance.**

**The Board finds that the Claimant admitted during the investigation that he was not entitled to meal reimbursement for the three days that he was scheduled off on vacation, and even though the expense form was completed by another worker, the Claimant signed the form attesting to its accuracies, and in this case inaccuracies. Although the Claimant testified that it was an oversight, this oversight occurred on three separate occasions. Canadian Pacific Policy COR 4140 (A) (2) defines fraud to include activities whereby employees knowingly misrepresent or conceal facts in order to deceive or obtain benefit or disadvantage that otherwise would be denied. The policy provides examples of behavior considered fraudulent, and one such example is the falsification of expense for personal gain. The Board finds that Claimant violated Policy 6308 Fraud (Corporate 4140). His actions are also in violation of COR Policy 6309 Business Expense Reimbursement Policy, GCOR Rule 1.6 and 1.13.**

**Canadian Pacific Policy COR 4140 (A) Scope states “...Any person who fails to comply with this policy shall be subject to Investigation and discipline, up to and including suspension or dismissal. Also, COR Policy 6309 Business Expense Reimbursement Policy provides for discipline, up to and including dismissal. Thus, the policy contemplates discipline less than dismissal in some circumstances. In consideration of the circumstances giving to the charge, length of service, and record of the Claimant, the Board finds that the discipline has served its purpose. The Claimant is reinstated with no back pay.**

### **AWARD**

**Claim sustained in accordance with the Findings.**

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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 10th day of January 2018.**