

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43562  
Docket No. MW-44922  
19-3-NRAB-00003-180374**

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

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

**PARTIES TO DISPUTE: (**

**(The Belt Railway Company of Chicago**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. D. Bremer, by letter dated February 22, 2017, for alleged violation of GCOR Rule 1.6, Conduct; 4, dishonest; The Belt Railway Company of Chicago’s Tuition Reimbursement Policy; and The Belt railway Company of Chicago’s Tuition Approval and Reimbursement Form was unsupported, arbitrary and constituted a violation of the Agreement [System File RI-1748B-801/17-BMWE-(00001) BRC].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Bremer shall be returned to service and ‘... made whole by compensating him for all wage and benefit loss suffered by him for his employment termination excluding outside earnings, any and all expenses incurred or lost all seniority fully restored, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of retirement month credit and any other loss.’”**

**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 Claimant held the position of trackman in the Carrier's Maintenance of Way Department, having entered the Carrier's service on August 5, 2015. On February 24, 2017, the Claimant was given notice of an investigation in connection with the following charge:**

**"Please arrange to report ... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violation of GCOR Rule 1.6, Conduct; 4, dishonest; The Belt Railway Company of Chicago's Tuition Reimbursement Policy; and The Belt Railway Company of Chicago's Tuition Approval and Reimbursement Form; whereby on Tuesday, February 21, 2017, you furnished D. S. Cargill, Manager of Engineering, a fraudulent sales receipt for tuition payment, in which (1) you attested, by your signature on the BRC's Tuition Approval and Reimbursement Form, that the tuition and fee expenses were not financed wholly or in part by any other agency, whereas, the Department of Veterans Affairs paid DriveCo \$2,909.09 for tuition and fees and paid you \$154.93 for books and supplies; and (2) forged receipt."**

**After a formal investigation on March 2, 2017, the Claimant was found in violation of GCOR Rule 1.6, Conduct; 4, dishonest; The Belt Railway Company of Chicago's Tuition Reimbursement Policy; and The Belt Railway Company of Chicago's Tuition Approval and Reimbursement Form and was dismissed from the Carrier's service.**

**The Claimant enrolled in a CDL course offered by DriveCo. The Claimant intended to use his G.I. bill benefit to cover the cost of the program. The Claimant was**

told to fill out a request for tuition approval and reimbursement and this request was approved by Carrier's management on January 24, 2017. At the conclusion of the driving course, the Claimant provided the Carrier with a receipt for \$3,500.00, the total cost of the course. Manager Cargill contacted DriveCo and requested an itemized receipt. DriveCo. provided a receipt to the Carrier which indicated that the Department of Veteran's Affairs ("VA") had paid \$2,909.09 on the Claimant's behalf and that the Claimant still owed \$590.91 for the cost of the driving course. When the Claimant signed the Carrier's Tuition Approval and Reimbursement Form, he attested, "The tuition and reimbursement for which I am requesting reimbursement were not financed wholly or in part by any other agency." The Claimant acknowledged his signature but claimed he did not read the form before signing it.

The Carrier contends that it has provided sufficient evidence that the Claimant was properly found at fault for his submission of a request for tuition reimbursement claiming incurred expenses for a CDL driving course when he had not in fact incurred those expenses. The Carrier contends that Cargill advised the Claimant that only out-of-pocket expenses were reimbursable, but the Claimant was adamant that he was entitled to full reimbursement, even though the VA had paid for approximately \$2,900.00 of his tuition expense. The Carrier contends that by signing the tuition reimbursement form and insisting on reimbursement despite Cargill's notice, Claimant engaged in dishonest conduct in violation of GCOR Rule 1.6, as well as the Tuition Reimbursement Policy.

The Organization contends that the Carrier failed to meet its burden of proof that the Claimant was dishonest, or that he submitted a fraudulent receipt. The Organization contends that the Claimant was approved to participate in the program and obtained a Class A CDL. The Organization points out that the Claimant testified that he believed the money available to him pursuant to the GI bill was money that he placed into an account for his own use for educational reasons but could not be withdrawn for other purposes. The Claimant further testified that he notified the Carrier's management that he intended to use funds from his GI bill account, and no one cautioned him against this. The Organization contends that if the Carrier believed that the Claimant was not entitled to be reimbursed, it could have simply denied his request, rather than dismiss him from its service.

The Claimant was charged with violation of GCOR Rule 1.6 (4), Dishonest, which states, in part, “Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal...” The record shows that the Claimant and members of management disagreed as to whether he was entitled to reimbursement of expenses that had been paid to DriveCo by the VA on his behalf. The Claimant was transparent about his belief that the funds paid on his behalf by the VA were actually his own money reserved for educational purposes. The Claimant testified that management knew that he was using his GI Bill to fund the expense of obtaining a CDL and they led him to believe that he would be reimbursed for this expense.

In short, there is insufficient evidence in this record that the Claimant intended to mislead the Carrier or that he willfully disregarded the Carrier’s interest. When the Carrier charges an employee with dishonesty, it must establish intent necessary to sustain the charge. We are unable to find that the Carrier met its burden of proving with substantial evidence that the Claimant intended to deceive the Carrier. However, the Claimant should have been more alert to the attestation that he signed seeking reimbursement for money funded pursuant to the GI Bill.

Under the particular circumstances of this case, we find that the Claimant should be given an opportunity to return to the Carrier’s service. The Board is exercising its authority to reduce the discipline to time served. Accordingly, the Claimant shall be returned to service with seniority unimpaired, but without backpay.

### **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 27th day of March 2019.**