

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43872
Docket No. MS-45082
20-3-NRAB-00003-180657**

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

PARTIES TO DISPUTE: (
(Todd Deidel
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“The following statement of claim is quoted from the June 25, 2018 letter by Petitioner Seidel to the Third Division of the National Railroad Adjustment Board, advising the Division of his intent to file an ex parte submission.

“...This is to serve notice, as required by the June 23, 2003 Uniform Rules of procedure of the National Railroad Adjustment Board, of my intention to file a submission within 75 days covering an unadjusted dispute between me and the (the Union Pacific Railroad) involving the following: I Todd Deidel truly believe I was wrongfully dismissed from my 27 year career with the Union Pacific Railroad on the charges of following rules 1.6 conduct 1.13 reporting and complying with instructions I am praying for full reinstatement of my job on the Union Pacific Railroad and full back pay for my time that I was off work for being wrongfully removed from service. I was not allowed to have my investigation hearing postponed until after I had surgery on the first of June from an injury that occurred earlier in the year I had chronic head aches from significant spinal impingement at c5-c6 and c6-c7 I was prescribed Hydrocodone and muscle relaxers for the pain there was absolutely no way I could go to the hearing on May 10, 2017 being under the influence of opiates and could not defend myself on the accused rule violations. I was separated from my wife during the years of 2012-2017 and was living in Mullen Ne we chose to stay married and live in separate homes and since we were still

married we did register vehicles in joint names. I did have the water shut off due to a broken water line coming into the house and stayed with a close friend in mullen. I did supply many receipts with my name on them from different stores in mullen for the Union Pacific. I have in my position Dr. statements with medication summary and treatment plans also I have six pages from my family Dr. with Dr. excuse from 2/18/17-6/1/17 and also I have E-mails from my union rep to the railroad asking for a continuance for the hearings...” ”

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 incident, the Petitioner was assigned as a Hytraker Operator and had approximately 25 years of service. On February 7, 2017, the Petitioner was interviewed by the Carrier's Corporate Audit division regarding a call received through the Carrier's value line regarding possible false per diem and mileage claims made by the Petitioner. Following the Corporate Audit interview and by letter dated February 24, 2017, the Carrier directed the Petitioner to report for a formal investigation regarding a possible violation of Rule 1.6: Conduct – Dishonest, and Rule 1.13: Reporting and Complying with Instructions, for allegedly reporting and gaining per diem for which he was not entitled.

After two postponement requests by the Organization, the hearing and investigation was conducted in absentia on May 10, 2017. By letter dated May 16, 2017, the Petitioner was notified that he was dismissed from service for violating Rules 1.6 and 1.13. In relevant part, the May 16, 2017 letter states the following:

“...After carefully considering the evidence adduced at the hearing, I find that the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 02/07/2017, while employed as a Trt Crwlr-Excavatr, you it was learned were dishonest in reporting the address where you were living to gain per diem to which you were not entitled. during the period of 2012-2016. Additionally, you were dishonest when questioned by Carrier officers on 02/07/2017. This is a violation of the following rule(s) and/or policy:

1.6: Conduct - Dishonest

1.13: Reporting and Complying with Instructions

Additionally, Rule 1.6: Conduct stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated. Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad...”

The matter progressed and is now before the Board for final resolution. It should be noted that the Petitioner represented himself during the Board’s hearing on the matter.

After a thorough review of the record and evidence created on-site, the Board finds the Carrier met its burden in proving by substantial evidence that the Petitioner gained per diem he was not entitled to by misrepresenting his address of record. As of September 4, 2012, the Petitioner was using his home located in Mullen, NE as his residence for claiming per diem. However, energy and utility records for the Mullen, NE residence were indicative that the house was vacant and not being lived in during the same time periods the Petitioner was using the residence for claiming per diem.

Acts of dishonesty are serious infractions and boards of arbitration have consistently upheld dismissal in such cases, irrespective of a Petitioner’s prior disciplinary record or longevity. Given the record here, the Board cannot find the Carrier acted in an unreasonable, arbitrary, or capricious manner in its dismissal of the Petitioner. Therefore, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Petitioner(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of January 2020.