

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44515
Docket No. 46209
21-3-NRAB-00003-200800**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

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

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. J. Fonseca, by letter dated November 1, 2019, for alleged violation of Amtrak’s Standards of Excellence in connection with allegedly claiming per diem travel expenses he was not entitled to, beginning September 5, 2018, was arbitrary, excessive and constituted a violation of the Agreement (Carrier’s File BMW-156872-D NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant J. Fonseca be returned to service and made whole, restoring all lost wages and benefits beginning October 4, 2019. Additionally, we request these charges be expunged from this personnel file and he otherwise be made whole. ”**

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, a ten-year employee, was terminated after an audit found that he had been claiming \$30 twice a week for travel expenses, rather than the \$15 twice a week permitted by the agreement between the parties.

The Carrier argues that the Claimant admitted that he claimed a greater per diem than he was entitled to from September 15, 2018 until the overpayment was discovered, a total of \$1595. The burden then shifts to the Organization to prove any defenses.

The Organization argues that there were serious procedural errors in this case. The Carrier failed to timely charge the Claimant. The Carrier knew in September, 2018 that the Claimant was entering an incorrect per diem expense but did not charge him until October, 2019. The Hearing Officer was biased and had no intent of holding a fair and impartial hearing. Finally, the Claimant should not have been held out of service prior to the hearing. This charge was not sufficiently serious to warrant such a suspension nor would the Claimant's continued employment have jeopardized the Carrier or its employees or the public.

Further, the Organization claims that the Claimant was not dishonest. He had stopped being a supervisor in September 2018 and took a job as a B+ operator. He asked a fellow employee about the proper per diem rate. He did not enter his own time into Maximo, the Carrier's payroll system. He therefore believed his expenses were being entered correctly. The Carrier failed to meet its burden of proof, the Organization asserts. Even if Carrier has met its burden, termination is an excessive penalty. The Claimant had over ten years of service and a clean disciplinary record.

Upon a review of the record, the Board finds that the Carrier has met its burden of proof. We considered the Organization's procedural objections and find them to be without merit. On the merits, we find it is insufficient that the Claimant says he asked another employee. In his previous role as a supervisor, he was responsible for approving payroll of the employees under him. He knew or should have known that the proper rate was \$15. The Hearing Officer made a credibility resolution and concluded that the Claimant was not being truthful. There is no basis

on the record in this case not to defer to this credibility resolution. We also find that dismissal is warranted.

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 29th day of July 2021.