

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44655
Docket No. SG-46258
22-3-NRAB-00003-200352**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(BNSF Railway Company (Former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of R. Salazar, for reinstatement to service with compensation for all time lost, including overtime pay, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on December 11, 2018. Carrier's File No. 35-19-0009. General Chairman's File No. 19-006-BNSF-20-C. BRS File Case No. 16120-BNSF. NMB Code No. 106.”

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 this dispute developed, the Claimant was assigned to SSCX 0316, in the Carrier's Signal Department. On September 13, 2018, he submitted an expense report for expenses from April 3, 2017, through October 9, 2017. The Claimant's Supervisor, Josh Applegate, denied the expenses and asked the Claimant to review and correct the expense report, as it should not contain 2017 expenses and many of the entries were for "cash out of pocket." The next day, the Claimant resubmitted the report without making the changes requested of him.

Thereafter, the Supervisor escalated the expense report, which was investigated by the Carrier's Compliance Team. Upon completion of the investigation, the Carrier found that the Claimant had submitted multiple expenses of \$9.99, or 1 cent below the dollar amount for which a receipt would be required. It was also determined that the Claimant submitted meal expenses for dates that he was not working due to bereavement leave or vacation. When the Claimant was questioned, he said that he had made a mistake and wanted to pay the money back.

On October 29, 2018, the Claimant was given notice of an investigation in connection with the following charge:

An investigation has been scheduled...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged claiming reimbursement for expenses you were not entitled to receive during the period of April 17, 2017 through September 5, 2017 while assigned to SSCX 0316. The date BNSF received first knowledge of this alleged violation is October 25, 2018.

After a formal investigation on December 11, 2018, the Claimant was found in violation of the Carrier's Corporate Policy on Travel and Entertainment Expenses, MWOR 1.3.3 Circulars, Instructions, and Notices; MWOR 1.6 Conduct; MWOR 1.13 Reporting and Complying with Instructions; and System General Notice 129 BNSF Policy Information and was dismissed from the Carrier's service.

By letter dated March 4, 2019, the Organization presented a claim to the Carrier which was denied by letter dated May 2, 2019. The parties were unable to

resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that the Claimant's admissions provide substantial proof that the Claimant violated the rules. The Carrier contends that the Claimant was in clear violation of BNSF's Corporate Policy on Travel and Entertainment Expenses, which provides, "BNSF Railway reimburses employees for actual expenses incurred while conducting BNSF Railway business that are reasonable and appropriate." The Claimant sought and received reimbursement for meal expenses on several days when he was off on bereavement leave or vacation. The Carrier contends that the Claimant was given clear instructions by his Supervisor to review his expenses but the Claimant failed to change anything as directed. The Carrier contends that it has shown the Claimant's failure to follow instructions and his Dishonesty.

The Carrier contends that the investigation was not untimely and that the Organization waived any arguments regarding timeliness by failing to make an objection to the investigation or the timelines during the on-property investigation. Moreover, the Carrier contends, that even if the argument is considered, Supervisor Applegate's denial on September 13, 2018, does not represent the date of first knowledge. The Carrier contends that the date of first knowledge was on October 25, 2018, after BNSF's Compliance team finished their internal investigation.

Finally, the Carrier contends that the Claimant's reimbursement of the money mistakenly paid to him should not change the outcome. The Carrier contends that the Claimant was dismissed after he lied about his expenses and then attempted to hide the improper requests. The Carrier contends that the Claimant's willingness or ability to reimburse the Carrier does not diminish his dishonesty.

The Organization contends that the Carrier failed to provide a fair and impartial investigation as required under Rule 54. The Organization contends that the investigation was held more than 15 days after the Carrier's knowledge of the incident, and thus the discipline was improper under the parties' Agreement. For this reason alone, the Organization contends, the claim should be sustained.

With respect to the merits, the Organization contends that the Carrier failed to present substantial proof of the Claimant's violations. The Organization contends that Supervisor Applegate approved the expenses that the Carrier now claims were wrongful. The Organization contends that the Carrier's own policy

provides that if a supervisor approves expenses, it indicates that the expenses were necessary and reimbursable. The Organization contends that the Carrier should have clearly informed the Claimant that his submitted expenses were being denied and they should not have been approved, if the Carrier believed they were improper. Furthermore, the Claimant has tried on several occasions to reimburse the Carrier, to no avail.

With respect to the Organization's contention that the investigation was untimely and in violation of the Claimant's rights under Rule 54 of the Agreement, a review of the record shows that no objection to the timeliness was raised at the on-property investigation. There is substantial board precedent confirming that when objections are not timely raised at the investigation hearing, they are deemed to be waived. Third Division Award 22238. The procedural objection is without merit.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

The Carrier bears the burden of proving the Claimant's violation. It presented evidence that the Claimant sought expense reimbursement for meals on days on which he was not serving the Carrier. The Claimant admitted that he had done so, alleging that he had made "an error." When asked about the unusual number of charges totaling \$9.99 or less, for which no receipt was required by policy, the Claimant admitted that he submitted those "in error."

Judging whether the Claimant's explanation of having made an error was plausible was the sole province of the Hearing Officer. As an appellate body, we must rely on the credibility findings made by those who observed the witnesses firsthand. The fact that the Claimant's supervisor gave him an opportunity to correct his expense reports and he resubmitted them in an identical form, certainly gives credence to the Hearing Officer's finding that the Claimant did not simply make a mistake. We find no reason to disturb the determination that the Claimant violated the Carrier's rules by his dishonesty.

Having so found, the Board must consider the penalty of dismissal. Numerous Boards have confirmed that an employer may dismiss an employee for dishonesty,

irrespective of the employee's past record or length of service. If leniency is to be exercised, it must be at the discretion of the Carrier.

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 15th day of December 2021.