

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45145
Docket No. MW-47719
24-3-NRAB-00003-220852**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. C. Ladner, by letter dated March 31, 2021, for violation of MWOR 1.6, was unfair, without just cause, not fair and impartial, disparate, prejudged and excessive (System File T-D-6702-J/11-21-0287 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Ladner:**

‘... must be immediately paid for his lost time while withheld from (sic) service and day to attend investigation, including any and all overtime paid to the position he was assigned to work, any expenses lost, difference in pay, and we also request that Mr. Ladner be made whole for any and all benefits, and his record cleared of any reference to any of the discipline set forth in the letter received by the Organization on March 31, 2021 letter from Tom Zerr.

As a remedy for the violation, the suspension shall be set aside and the Claimant shall be made whole for all financial and benefit losses as a result of the violation. Any benefits lost, including vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:

- 1) Straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the claimant while wrongfully suspended);
- 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service;
- 3) Overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time Claimant was suspended from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the Claimant not been suspended from service;
- 4) Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly suspended.””

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.

Factual Background

Claimant Charles Ladner, a 7-year employee, worked as a carpenter assigned to a mobile gang in North Dakota. Between February 5 and October 20, 2020, the

Claimant had three assignments working in Minot and Grand Forks, North Dakota. These assignments required the Claimant to stay in a company provided hotel.

On November 25, 2020, Supervisor Ivan Arias learned from Claimant's coworkers that the Claimant's wife had been staying at the company provided hotel with the Claimant. Five days later, on November 30, the Claimant told Supervisor Arias that he wasn't feeling well, and that his wife had tested positive for Covid. The Claimant also told Supervisor Arias that a friend of his had also been staying with him in the company provided hotel. Wanting to make sure the Claimant's actions complied with the Carrier's travel policies, Supervisor Arias reached out to Carrier's labor relations office. The labor relations office directed Supervisor Arias to the Carrier's Corporate Compliance team. The Carrier's compliance group assigned Program Manager Wendell Parker to look into Supervisor Arias' inquiry.

Parker met with Supervisor Arias on December 1, and reviewed the Claimant's travel vouchers and his corporate lodging card account. As Parker reviewed the data, he found several discrepancies.

On December 17, 2020, Parker interviewed the Claimant about these discrepancies. After this interview, Parker obtained sufficient information confirming that the Claimant used his company issued corporate travel card to pay for lodging at locations other than where the gang was working. Parker's investigation also revealed that on October 7 and 8, 2020, the Claimant booked a hotel more than 75 miles away from his work location to go bird hunting with a non-employee friend. The Claimant admitted to Parker that he used his corporate travel card to pay for this stay and admitted that he had taken a vacation day on October 8—one of the days he charged the Carrier for his non-work-related hotel stay. Parker believed that the Claimant's admissions established that he violated the Carrier's Weekend Lodging Policy which states employees are only entitled to company provided lodging while they remain at their assigned work site.

The hearing officer conducted an investigation on March 5, 2021 in Grand Rapids, Minnesota. On March 31, 2021, the Carrier dismissed the Claimant for dishonesty and misuse of corporate lodging in violation of Section 1.6 of the Maintenance of Way Operator Rules.

Position of Organization

The Organization maintains that the Carrier's imposition of discipline is untimely. The Organization also points out that the Carrier did not meet its burden of

proving improper or fraudulent conduct. The evidence established that the Claimant may have been confused and not fully understood the Carrier's travel policies.

Carrier's Position

The Carrier disagrees with the Organization's assertion that the investigation was untimely. The Carrier points out that it did not confirm the allegations until Parker reported his findings to the appropriate supervisors on January 12, 2021—the supervisor with the authority to charge the Claimant and properly issue an investigation notice.

The Carrier believes that the substantive evidence supports its conclusion that the Claimant violated MWOR 1.6. The evidence in the record confirms that the Claimant engaged in fraudulent conduct by using his corporate travel card to book a hotel room for his personal use. The Carrier believes that this is an integrity violation, and that the Claimant has inexcusably engaged in fraud and theft against the company. If the Claimant had questions about the travel policy, then he should have asked his supervisor prior to using company funds for a non-related business expense.

Analysis

Before reviewing the merits of this grievance, the first issue the Board must resolve is whether this grievance is properly before the Board. The relevant sections of Rule 40 state:

- A. An employee in service sixty (60) days or more will not be disciplined or dismissed until after a fair and impartial investigation has been held. Such investigation shall be set promptly to be held not later than fifteen (15) days from the date of the occurrence, except that personal conduct cases will be subject to the fifteen (15) limit from the date information is obtained by an officer of the Company (excluding employees of the Security Department) and except as provided in Section B of this rule.

The Board has carefully reviewed the record and finds there is insufficient evidence supporting the Organization's claim that Carrier failed to conduct the investigation in a timely manner.

Regarding the merits, the Board sits as an appellate review forum in discipline cases. As such, it does not weigh the evidence *de novo*. The Board's function is not to substitute its judgment for that of the Carrier, nor decide this matter in accord with what the Board believes should have been decided had it been the Board's decision to

make. Rather, the Board's inquiry is to determine whether sufficient evidence exists to sustain the discipline imposed by the Carrier. If there is sufficient evidence supporting the Carrier's decision, then the Board cannot disturb the penalty unless the record reflects that the Carrier's decision was unjust, unreasonable or so arbitrary as to constitute an abuse of discretion.

The Board has carefully studied and examined the record and finds insufficient evidence to uphold the Carrier's charges. While the Board notes there is some evidence the Claimant engaged in questionable conduct, the Board finds dismissal was too severe on this record, given the lack of substantial evidence establishing intent to deceive. There is some evidence that the Claimant may have been confused regarding the Carrier's travel policies, but there is also some evidence that he should have known better. For these reasons, the Board finds that the discipline be reduced from dismissal to a Serious Level S Suspension for 30 days with a 36-month review period to commence upon his return to service and the Claimant is to be reinstated with no back pay.

The claim is sustained in part. The Carrier shall immediately remove the dismissal from the Claimant's record, showing the suspension described above, and reinstate the Claimant, subject to the policies on return to work with seniority. Any other claims for compensation not specifically granted in this award are hereby denied.

AWARD

Claim sustained in part in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made consistent with the Findings. 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 22nd day of February 2024.