

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45252
Docket No. MW-47577
24-3-NRAB-00003-220442**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Corporation

STATEMENT OF CLAIM:

- “(1) The discipline of dismissal from CP effective immediately imposed on Mr. J. Lassek, by letter dated January 4, 2021, for alleged violation of GCOR 1.6 Conduct was imposed without according Claimant his contractual rights, due process rights and with no burden of proof being fulfilled by the Carrier before it assessed what can only be deemed as excessive and unduly harsh discipline that constitutes an abuse of discretion (System File B-2134D-203/USA-DM&E-BMWE-2021-00022099 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Lassek shall now be made whole by compensating for all wage and benefit loss suffered, any and all expenses incurred or lost as a result of Round trip Travel not paid for the scheduled Hearing on December 8, 2020, and the alleged charge(s) be expunged from Claimant’s personal employment record. Claimant must also be made whole for any and all other loss incurred and compounding from this event until this event is expunged from the Charged employee’s employment record.”**

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.

Claimant J. Lassek began service with the Carrier on November 18, 2019.

Claimant established and maintained seniority in the Carrier's Maintenance of Way and Structures Department. On the dates giving rise to this dispute, October 16, 2020 through October 18, 2020 and October 23, 2020 through October 25, 2020, Claimant was assigned to a Maintenance of Way Track Sub Group position. Claimant's current position at the time was Equipment Mechanic.

Relevant to this claim is Carrier's Rule 24 that provides for Meals, Lodging and Travel Expense Reimbursement. According to Rule 24, employees are eligible for reimbursement of these expenses when required to stay away from their headquarters point overnight or, if non-headquartered, when required to stay away from their residence overnight. On the four week-end dates noted above, Claimant was a non-headquartered employee. The record evidence reflects he left his residence to begin his drive to his work location on Sunday, October 11, 2020 and worked the week of October 12 through October 15, 2020. Carrier noted that due to the fact Claimant's drive home located at Columbus, Nebraska from his work location, located at Thompson, Illinois is a "long drive", it has allowed him to stay in a company-provided hotel, Surestay Hotel on Thursday nights. In this instant case, Claimant stayed at the hotel the Thursday night of October 14, 2020 prior to his drive home at the end of his tour of duty on Friday, October 15, 2020 and again, on Thursday night of October 21, 2020 prior to his drive home at the end of his tour of duty on Friday, October 22, 2020. However, on these two weekends, the four weekend dates in question, Claimant elected not to drive home at the end of his tour of duty on Friday, October 15, 2020 and make the return drive to his work location on October 17, 2020, one day prior to the start of the workweek on October 18, 2020, and again the following weekend, not to drive home at the end of his tour of duty on October 22, 2020, but rather to stay at his work location at the Company hotel at his own expense, thus obviating the need to commence the return drive from his

residence on October 23, 2020, one day prior to the start of the October 24, 2020 workweek. Claimant explained that on these Thursday nights at the hotel, it was his modus operandi to prepare his expense report for the week and to submit the report to the Carrier prior to driving back home.

Claimant's supervisor, Travis Sawyer, in response to a conversation he had with Claimant wherein, Claimant indicated he had stayed at the hotel over the weekend, acting on his own initiative, contacted management at the Surestay Hotel and was informed that Claimant had stayed at the hotel over the four weekend dates in question and therefore had not incurred any expense associated with driving round-trip from his residence to his work location and return to his residence. Nevertheless, Claimant filed on his expense report he submitted to the Carrier seeking reimbursement of the miles he never drove on the four weekend dates in question. Acting on information obtained by Supervisor Sawyer, Carrier suspected Claimant had committed a dishonest act in violation of GCOR Rule 1.6 Conduct (US Rulebook for Engineering Employees) which provides in subpart 4 of the rule, "Employees must not be dishonest". As a result of Carrier's view Claimant had committed a dishonest act by filing for reimbursement of expenses never incurred for travel, Carrier convened a Formal Investigation on December 8, 2020, notifying Claimant "the purpose of which was to determine the facts and circumstances and to place his responsibility, if any, in connection with the alleged fraudulent expense claims from the weekends of October 16, 2020 – October 18, 2020 and October 23, 2020 – October 25, 2020 which indicates a possible violation of, but not limited to the following rule, GCOR 1.6 Conduct".

At the investigation, Claimant testified he had every intention of driving home on the weekend of October 16, 2020 but he encountered a problem with the transmission of his Ford vehicle and, as it was late in the day, he decided not to make the drive home. However, according to Claimant, he had already prepared his expense report for the workweek ending October 15, 2020 which included the round-trip mileage expense, and had already submitted said report before changing his intention to drive back from his Illinois work location to his Nebraska residence. In contradiction to Claimant's explanation regarding his having already prepared and submitted his expense report seeking reimbursement for mileage he never incurred and that he did so before making the decision not to make the drive home over the weekend, Supervisor Sawyer recalled that at a job briefing held Friday morning, October 15, 2020, the last day of the workweek, he informed Claimant that the following workweek, the work location would be moving from Thompson, Illinois to Liberty(ville), Illinois. Sawyer related it was at

this job briefing that Claimant mentioned his having a hotel room over the weekend. Sawyer further testified at the investigation he informed Claimant it was not acceptable and could not claim traveling expenses for traveling expenses he did not incur. Claimant emphatically denies that any such conversation between himself and Sawyer occurred over the claiming of travel expenses. Claimant recalled however that he had, had conversations with Sawyer regarding expenses but that they were in relation to his filing for meal allowance which he had been claiming over a year-long period and that Sawyer told him he could no longer claim the meal allowance expense. Claimant asserted that had Sawyer told him that by keeping his hotel room on the weekends he could not then claim mileage expenses related to travel, he would have gone back and withdrawn his claim for traveling expenses from his expense report. Furthermore, Claimant asserted that by staying over at the work location and not going back home was not financially advantageous as he assumed all expenses associated with staying at the hotel, specifically the daily room charge and paying for meals, and in addition, missing picking up mail at his residence over the weekend wherein, as a result, he incurred late fees for bills not paid on time, in particular medical bills. Finally, Claimant maintained that like the meal allowance he was paid each day on the job, he viewed the mileage expense associated with his workweeks as an allowance being unaware there is a difference until now that there is a difference in interpretation between what constitutes an allowance expense and what constitutes a reimbursement expense.

Carrier explains in accord with its interpretation of Rule 24, that expenses deemed to constitute a reimbursement are dissimilar to expenses deemed to be an allowance such as, for example, a food allowance which is a fixed daily dollar amount allotted to employees whether or not the employee elects to actually expend the entire allowance for food. The difference is, Carrier asserts, that in order to be entitled to the reimbursement expense associated with driving a personal vehicle from one's residence to one's work location and return to one's residence, the employee actually has to incur the expense associated with the claimed number of miles driven. Carrier notes that Rule 24 contains within its language expenses associated with both allowances and expenses associated with reimbursements and by virtue of Claimant's admitted training on the rules and his filing for expenses over the duration of his service of employment, he was well aware of the distinction between a monetary allowance and an expense reimbursement. Carrier contends that Claimant's knowledge of the difference reveals an attempt on his part to claim a reimbursement expense for miles driven he never incurred was an attempt on his part to deceive the Company which equates to an act of

theft which cannot be tolerated. Accordingly, Carrier dismissed Claimant from its employ finding that Claimant was guilty of committing fraud.

Upon a thorough review of the record evidence including exhibits, witness testimony and partisan argument asserted by Carrier and Organization, the Board finds that Claimant's denial he had no intention to secure a monetary benefit he was not entitled to receive, here specifically, reimbursement of travel expense for mileage he never incurred but nevertheless filed for on at least two expense reports submitted to Carrier constitutes a defense that is difficult to accept as having any merit. However, we note that at the time Claimant filed for the reimbursement of travel expenses, specifically associated with miles he did not drive, he had been in the employ of the Carrier for only a period of eleven (11) months. It is possible that Claimant, as he contends, was unaware of the distinction between what constitutes an expense allowance and what constitutes an expense reimbursement. The Board therefore extends Claimant the benefit of doubt and reverses Carrier's decision to dismiss Claimant from its employ. However, the Board is of the view that Claimant is not entitled to any make whole remedy as a result of this reversal, meaning no award of back pay or any other monetary benefit ordinarily bestowed on an employee ordered by us to return to service of the Carrier. Additionally, the Board orders Carrier and the Organization to enter into negotiations to mutually obtain agreement on a "Last Chance Agreement" applicable to Claimant's employ going forward.

AWARD

Claim sustained in accordance with the Findings.

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 28th day of March 2024.