

PUBLIC LAW BOARD NO. 1760

Award No. 60

Case No. 60

Carrier File MW-STL-84-1(ME)

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: 1. Carrier violated the effective agreement when utility Carpenter J. K. Kellog was unjustly dismissed from service by letter dated August 10, 1984.

2. Claimant Kellog shall be paid for all time held from service and be reimbursed for the amount deducted from that said expense account by the Carrier.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant's General Foreman sent Claimant the following letter on July 12, 1984:

"In reference to my letter of July 5, 1984, notifying you report to the office of the General Foreman, for a formal investigation to determine your responsibility in connection with your being in violation of that part of NW Safety Rule 1713 which reads:

'Negligence in handling company business****, dishonesty,****, are sufficient cause for dismissal.'

On June 25, 1984, in that you filed a fraudulent expense account form, form #11017, dated June 18, 1984, and attached an altered receipt #5324-31 dated June 21, 1984, at Howard Johnsons, while

you were working in Kansas City, Missouri, showing the amount of \$16.64, in an attempt to defraud the company when the actual expenditure was \$6.64 at Howard Johnsons, Kansas City, MO, on that date.

Per the request of your General Chairman, BMW, Sol Hammons, Jr., in his letter of July 9, 1984, this formal investigation is hereby postponed and rescheduled for 10:00 AM Monday, July 30, 1984."

Claimant was notified as a result of the investigation held, that he had violated Safety Rule 1713 and was dismissed from all service and employment with the Norfolk and Western Railway Company.

The Board finds that Claimant was accorded the due process to which entitled under his discipline rule.

There was insufficient information to support the conclusion reached by Carrier as to Claimant's culpability. The circumstances involved herein present a most unusual case. Unusual in the fact that only the form of an attempted theft appears and not the substance thereof.

Claimant was employed on September 14, 1981 as Carpenter Helper. As a result of an agreement, he became a Utility Carpenter performing MofW work in the facilities of and under the jurisdiction of the Mechanical Department, on April 15, 1984. Claimant was assigned and headquartered at St. Louis, Missouri on June 15, 1984.

As a Carpenter's Helper in the MofW group when away from headquarters his lodging accommodations were taken care of and paid for by Carrier people. Also, any necessary incurred meal expenses were covered by a daily meal allowance of \$3 for breakfast, \$4 for lunch and \$5 for dinner.

As a Utility Helper, however, Claimant's expenses were governed by "actual necessary expenses" which required the paying thereof by the individual and filing of a travel expense form for recovery thereof. Said Norfolk & Southern Travel Expense Form No. 11017 (Ex: "A") required the detailing of expenses and the attaching of receipts for expenses of \$5 or more.

Claimant had been instructed by his Foreman to go to Kansas City, KA to perform work on June 18 through the 22, 1984. This was the first Company travel expense form that Claimant was required to fill out. Claimant received no instructions thereon. Nor did he request anyone as to how to fill out the form.

The problem arose because Claimant paid the tips for his meals in cash. He found no item on said form, Travel Expense Form, for "tips." Consequently, Claimant who had spent some \$10 in tips decided to add \$10 to the last meal check by adding the figure one (1) to said \$6.64 check in order to make up for the cash tips he paid out.

Clearly, Claimant was at fault in the method that he followed for reimbursement. However, just as clearly it was not an act properly construed as an attempt to defraud. A careful examination of the travel expense form in question reflected Claimant's careful exercise of "actual necessary expenses." Claimant should have used the "miscellaneous" column for tips as he did fail to include same on each meal taken. However, tips are a part of the meal and should have been included in the expense thereof. Thus, it appears on balance that Claimant's altering was more of willful error and misjudgement followed as a means of recompensing rather than, as initially concluded and charged, "an attempt to defraud."

Consequently, while the Board does not in any way disagree with Carrier's arguments or the principle in circumstances that would be applicable to an attempted theft, however, the evidence here does not support such a conclusion. Therefore, Claimant, who is not without fault, should be reinstated to service subject to passing the necessary examinations and paid for all time subsequent to October 10, 1984, less any outside earnings and the usual offsets.

Award: Claim sustained as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

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M.A. Christie

M. A. Christie, Employee Member

J. A. Abbateello, Jr.

J. A. Abbateello, Jr., Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 8, 1985.