

File: REG-BM-151C
85-4-12

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 44
)	
vs)	Award No. 38
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The discipline imposed upon former B&B Foreman L. Covarrubias for alleged violation of Rules 564 and 575 was without just and sufficient cause, excessive and unreasonable.
2. The Claimant's record shall be cleared of the charges levelled against him and he shall be compensated for all wage loss suffered in accordance with the provisions of Rule 40(G).

FINDINGS

At the time of the incidents leading to this case the Claimant was employed as a subdepartment foreman in the Bridge and Building Department of the Carrier. He was assigned to Mobile Crew 595-415 which was working the East Rocky Mountain Seniority District. Because the Claimant was often required to live away from home while on assignment during the week, he was entitled to reimbursement of expenses under Rule 36 of the Agreement. This Rules states, in pertinent part, that reimbursement will be made for "...cost of meals and logding incurred while away from...outfit() or regular headquarters by direction of the Company, whether off or on... assigned territory". Reimbursement requests are made by submission

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of monthly expense account form(s), duly signed by employee submitting them, with statement to the effect that what is contained therein is a "true statement". When the Claimant submitted the expense account form for September of 1984 the B&B Supervisor noted an irregularity because receipts supporting two nights' motel expense which the Claimant had claimed were absent. The form was returned to the Claimant with request to furnish evidence. Approximately a month later the Claimant resubmitted the forms for September, and also the forms for October of that year. After reviewing both of the expense account forms and attached materials the Foreman noted that the receipts did not appear to be valid ones with respect to alleged stays on certain days at motels. Additional investigation on the part of the Carrier's Police and Special Services' Department revealed that the receipts were forgeries.

The Claimant was cited for falsification of documents attached to expense account forms separately for the months of September and October of 1984 and two investigations were held. After the investigations the Claimant was found guilty as charged and he was dismissed from service.

The instant case contains a voluminous file which includes the record of the two investigations and extensive correspondence developed by the Local Chairman, particularly, wherein it is alleged that the Carrier was subject to various procedural defect while handling this case. The Board has closely studied the record and is unable to conclude that the Carrier was in procedural default.

The Claimant was returned to service on leniency basis with probationary status approximately one year after discharge and the matter before this Board, on merits, deals with relief and back pay for the time he was out of service.

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A review of the transcripts of the two investigations as well as the record as a whole warrants the conclusion, corroborated by testimony by the Claimant himself, that the receipts attached to the September and October, 1984 monthly expense accounts were not all valid. On basis of substantial evidence, therefore, the Board must reasonably conclude that the Claimant was in violation of the two Rules at bar which state the following:

Rule 564

Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest....or who conduct themselves in such a manner that the railroad will be subjected to criticism and loss of good will.


Rule 575

Theft or vandalism shall be considered sufficient cause for dismissal from railroad service....

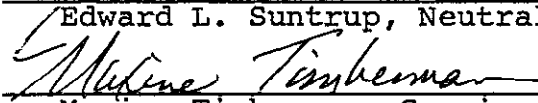
Numerous arbitral forums in this industry have concluded that defrauding a Carrier is a serious violation and is grounds from dismissal (Third Division 13130; Public Law Board 4161 Award 1 & 37 inter alia). On basis of the record as a whole this Board cannot reasonably diverge from this precedent in the instant case and the claim must be denied.

AWARD

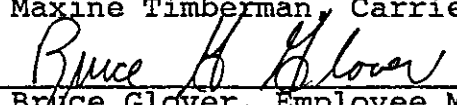
The claim is denied.



Edward L. Suntrup, Neutral Member



Maxine Timberman, Carrier Member



Bruce Glover, Employee Member

Date: _____