

PUBLIC LAW BOARD NO. 4244

Award No. 235

Case No. 242

Carrier File No. MWE980928AA

Organization File No. 170-13D2-986.CLM1

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on September 4, 1998, the Carrier dismissed Mr. J. D. Chandler for alleged violation of Rule 1.6, Conduct, of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged improper claiming of expenses for which he was not entitled during the period of June 1997 through June 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

During the period of time from June 1997 through June 1998, the claimant, gang foreman Jodell Chandler, submitted expense accounts to the Carrier on Form 1665 Standard. In 1997, the claimant submitted expense accounts to the Carrier which claimed a total of \$5,937.13 and in 1998, the claimant submitted expense accounts to the Carrier which claimed a total of \$8,342.58. Tim Sauls, the accounts payable manager in Topeka, noticed that the signature of roadmaster Rico Walker on the expense accounts submitted by the claimant appeared to be a "forgery." As a result of this suspicion, Richard Allen Nevins, a special investigations manager with the internal audit division in Fort Worth, Texas, audited twenty-eight expense accounts submitted by the claimant during the period of time at issue in this

case. During the course of this audit, roadmaster Walker stated that he did not recall signing the expense accounts submitted by the claimant and the signature on the expense accounts was not his signature. At the conclusion of the audit, the Carrier alleged that the claimant falsified approval signatures, claimed expenses for which he was not entitled and did not sufficiently detail the mileage claimed on his expense accounts.

The Carrier notified the claimant to attend an investigation to develop the facts and determine his responsibility, if any, in connection with a possible violation of Rule 1.6 of the Maintenance of Way Operating Rules (MWOR) concerning a report which alleged that during the period of June 1997 through June 1998, the claimant submitted Forms 1665 Standard claiming expenses for which he was not entitled and falsified approvers' signatures. As a result of the investigation conducted on August 11, 1998, the Carrier dismissed the claimant from service for violating Rule 1.6 of the MWOR. For the following reasons, the Board finds that the Carrier has not satisfied its burden of proof that the claimant violated Rule 1.6 of the MWOR.

A camper allowance is permitted by the Carrier if an employee bids to a non-headquartered position and provides documentation that he actually owns a camper. Additionally, an employee who claims a camper allowance must hold the position of foreman, assistant foreman or machine operator. Lastly, an employee must be working 30 miles or more from his home station in order to be eligible to receive a camper allowance, which is \$32.00 per day. The \$32.00 per day camper allowance is entered by employees on time

documents. However, the claimant improperly submitted his claims for camper allowance to the Carrier on his expense accounts. Additionally, the claimant improperly claimed a camper allowance of \$42.50 per day on some of his expense accounts which he submitted to the Carrier in 1997.

The evidence of record reveals that numerous expense accounts submitted by the claimant, which were entered as Exhibits 7, 8, 11, 12, 13 and 14 during the investigation, were signed and approved by the proper Carrier official. These expense accounts were completed in the same manner by the claimant as every other expense account submitted by the claimant during the period of time at issue in this case. Therefore, the Board finds it reasonable to believe that the claimant was under the impression that he was submitting his expense accounts in the proper manner. During the time period at issue, the Carrier had ample opportunities to notify the claimant that his expense accounts were improperly submitted. The Board finds that the Carrier cannot charge the claimant with a rule violation for submitting his claims for camper allowance on the wrong form when the claimant was led to believe by the Carrier that he was submitting his claim for camper allowance in a proper manner. Furthermore, the Board finds that the Carrier could have corrected the improper amounts submitted by the claimant for camper allowance and notified the claimant of his error.

For the following reasons, the Board further finds that the Carrier has not satisfied its burden of proof that the claimant submitted mileage claims for which he was not entitled. At the investigation, the claimant testified that he was instructed by the Carrier to use his truck as a "chase truck" because the Carrier truck was unreliable and frequently in need of repair. The

Carrier did not provide evidence at the investigation to contradict the claimant's testimony regarding the condition of the Carrier's truck. Additionally, the Carrier did not produce any probative evidence which would lead the Board to conclude that the mileage claimed by the claimant was for personal use and not work use as stated by the claimant. The Board also finds that the Carrier has failed to produce evidence that the claimant did not sufficiently detail the mileage claimed on his expense accounts. Numerous expense accounts, which only indicated the number of miles traveled, were submitted by the claimant during the time period at issue and were subsequently approved by the Carrier.

Lastly, the Board finds that the Carrier did not present any evidence that the claimant forged approval signatures on expense accounts which he submitted to the Carrier. In contrast, the claimant testified that he submitted numerous unsigned expense accounts to the Carrier in unsealed envelopes which he placed in a box in front of the roadmaster's office. Jeff Hauser, a fuel truck driver employed by the Carrier, further testified that he witnessed the claimant submit expense accounts to the Carrier in unsealed envelopes which were not signed for approval by a roadmaster at the time of submission by the claimant. None of the Carrier's witnesses observed claimant commit the alleged forgeries, nor was the testimony of a handwriting expert offered to verify that the signatures were actual forgeries committed by the claimant.


Based upon the facts and circumstances presented in this case, the Board finds that the claimant did not intentionally or willfully attempt to defraud the Carrier. The Carrier did not

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prove by clear and convincing evidence that the claimant committed acts which warranted his dismissal. Accordingly, the claim is sustained as set forth in the Award.

AWARD

The claim is sustained. The Carrier is to comply with this Award within thirty (30) days from the date of issuance.


Thomas M. Rohling, Carrier Member
I Dissent!!


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 18th day of May, 1999.