

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 138
UNION PACIFIC RAILROAD COMPANY) Award No. 123
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: February 7, 2008

STATEMENT OF CLAIM:

- (1) The discipline assessment of dismissal for a violation of Rule 1.6 in connection with Claimant Kevin G. Mort's failure to comply with the Visa Credit Card Policy including an audit which found the improper usage of the card and subsequent failure to provide the required documentation to support purchases is not acceptable.
- (2) As a consequence of the violation referred to in Part (1) above, the Organization requested that the discipline be reversed and Mr. Mort be reinstated with seniority unimpaired. The Organization further requested that Mr. Mort be made whole as if there had been no discipline issued and no suspension from service and that his record be expunged of any mention of this matter. It was requested that the Claimant be paid for all hours that he would have worked, including overtime and he be compensated for his time not paid on the day of the hearing on September 8, 2006. The Organization alleged a violation of Rule 48 of the Agreement.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On August 23, 2006, Claimant was directed to report for an investigation on September 8, 2006, concerning an audit and review of his 2002 BTE expenses and alleged improper usage of

his BTE card and failure to provide required documentation to support his purchases, in violation of Rule 1.6. The hearing was held as scheduled. On September 22, 2006, Claimant was advised that he had been found guilty of the charge and dismissed from service.

The record reflects Claimant had two Carrier credit cards. A Business Travel and Expense (BTE) card was to be used for lodging and meal expenses. The bill came directly to Carrier but Claimant received a monthly statement and was to account to Carrier with receipts supporting the purchases made on the card. A corporate credit card was to be used to business-related purchases. The monthly bill came to Claimant and he was to submit for reimbursement of expenses incurred. Purchases of less than \$10.00 did not require receipts.

There is no dispute that, beginning August 14, 2002, Claimant used the BTE card to charge numerous personal expenses, including purchases made when he was not traveling on Carrier business. The critical issue is whether Carrier proved, by substantial evidence, Claimant's dishonest intent.¹


Claimant testified that he was never instructed on and was therefore unsure of the proper use of the BTE card. As an appellate body that does not observe the witnesses testify, we are in a comparatively poor position to evaluate witness credibility. Accordingly, we defer to the credibility determinations made on the property as long as they are reasonable.


In the instant case, the determination made on the property not to credit Claimant's testimony was eminently reasonable. Of particular significance is evidence that when traveling on Carrier business, Claimant charged numerous meals to his BTE card and also submitted expense reimbursement requests for the same meals. Claimant testified that he understood he had to report his charges on the BTE card and believed that his expense reimbursement requests were the proper means to make those reports. However, the amounts for which reimbursements were requested varied considerably from the amounts charged on the BTE card. Furthermore, the differences cannot be explained, as Claimant tried to do, as after-the-fact estimates of the charges. Rather than reflect estimates, the amounts for which reimbursements were claimed were precise to the penny. Moreover, all were in amounts under \$10.00, i.e., amounts that did not require receipts. Rather than reflect confusion on proper use of the BTE card, the double billing for meals while traveling on Carrier business suggests a calculated effort to defraud Carrier numerous times in relatively small amounts each time by keeping the requests under \$10.00 each and thereby avoiding the need to account for them with receipts. The Agreement does not require Carrier to retain such a thief in its employ.



¹The Organization also argues that the charges were not timely but it is clear that under Rule 48, the time limits on filing charges run from the date a Carrier official with disciplinary authority over the employee first becomes aware of the offense. In the instant case, awareness of the offense did not occur until after the audit, even though that occurred several years after the offenses themselves.

AWARD

Claim denied.



Martin H. Malin, Chairman

D. A. Ring
Carrier Member

June 6, 2008

T. W. Kreke, Employee Member
Employee Member

Dated at Chicago, Illinois, May 31, 2008