

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 6402  
AWARD NO. 193, (Case No. 215)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
DIVISION - IBT RAIL CONFERENCE**

**vs**

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific  
Railroad Company)**

William R. Miller, Chairman & Neutral Member  
K. D. Evanski, Employee Member  
K. N. Novak, Carrier Member

Hearing Date: June 4, 2013

**STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:**

- 1. The discipline (dismissal) imposed on Mr. R. Garcia by letter dated October 14, 2011 for alleged violation of Rule 1.6 Conduct (3) Insubordinate, Rule 1.6 Conduct (4) Dishonest and Rule 1.13 Reporting and Complying with instructions as contained in the new Engineering Travel Allowance Policy effective March 1, 2011 and was allegedly dishonest when he claimed travel allowances that he was not allowed was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP276WF11/1558540).**
- 2. As a consequence of the violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Garcia's record and compensate him for all losses, including straight time and overtime wages, benefits, seniority rights and any other losses suffered as a result of the Carrier's unjust and improper discipline."**

**FINDINGS:**

Public Law Board No. 6402, upon the whole record and all 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 September 23, 2011, Claimant was directed to attend a formal Investigation on September 29, 2011, concerning in pertinent part the following charge:

**"...to develop the facts and place responsibility, if any, that while employed as Maintenance of Way employee on Gangs 4140, 1145 and 2299, you allegedly**

**refused to comply with the instructions contained in the new Engineering Travel Allowance Policy, effective March 1, 2011, in addition, you were allegedly dishonest when you claimed travel allowances you were not entitled.**

**These allegations, if substantiated, would constitute a violation of Rule 1.6 Conduct (4) Dishonest, and Rule 1.13 Reporting and Complying with Instructions, as contained in the General Code of Operating Rules, effective April 7, 2010. Please be advised that if you are found to be in violation of this alleged charge the discipline assessment may be a Level 5, and under the Carrier's UPGRADE Discipline Policy may result in permanent dismissal."**

On October 14, 2011, Claimant was notified that he had been found guilty as charged and was assessed a Level 5 discipline and dismissed from service.

The facts indicate that Claimant while employed on Gangs 4140, 1145 and 2299 was requested to provide verification of his travel claims on two separate occasions. On April 25, 2011, Claimant was sent a letter from the Carrier's Corporate Audit Team requesting documents to verify his place of residence and travel for mileage claims on March 1, 8, 15, April 1, 8, and April 15, 2011. Subsequently, Claimant provided documentation proving his residency and on May 9, 2011, Corporate Auditor A. Nelson spoke with the Claimant explaining the April 25th letter and the documentation that was needed to verify Claimant's travel claims and Carrier's Travel Policy.

On May 23, 2011, Claimant attended a Safety Stand Down meeting where the Travel Policy was discussed and on August 3, 2011, the Carrier met with the Claimant to discuss the various requirements. At that meeting Claimant asserted he was unaware of the Travel Policy even though he had received the Carrier's letter of April 25, 2011, and had a conversation with Auditor Nelson. At the conclusion of the meeting the Carrier decided to give the Claimant another chance to comply with future instructions and the Claimant agreed to provide the necessary documentation for the next request.

On August 4, 2011, Claimant was again requested to provide receipts for mileage claimed on May 6, 12, 16, June 3, 17, July 1, 8, and 14, 2011. It was asserted that the Claimant did not provide the proper documentation for all of the dates and because of that failure the charges were filed.

It is the Organization's position that examination of Rule 37 reveals there is no requirement for a receipt for travel allowances and the Carrier's Travel Policy is in conflict with the Agreement. It argued the Carrier offered no proof that the Claimant did not travel home on the dates in question, nor did it even contend that he had not traveled home. It suggested that

Carrier's actions in dismissing the Claimant for not having receipts after it already recouped its payment was egregious behavior. It further argued that the record shows that the Claimant did not refuse to provide receipts, he simply did not have all of the receipts, however, he did provide receipts that he had, but was told they were not acceptable. It reasoned the Claimant did not fail to comply with instructions and there was no showing that he was dishonest. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that after having given the Claimant another chance to comply with its instructions regarding providing receipts to substantiate travel claims it asked the Claimant on August 4th to provide receipts for mileage claimed on various dates in May, June and July of 2011. It argued the record is clear that Claimant was aware of the Carrier's Travel Policy when he claimed travel for those dates. According to it, Claimant again failed to show his travel claims as he was not able to provide receipts for four of the eight dates requested and for those dates he did provide receipts, two of them did not comply with the Carrier's Travel Policy because the times and locations were questionable. Thus according to the Carrier Claimant failed to provide proper documentation for six of the eight dates requested. It concluded testimony proved that Claimant was given two chances to prove his travel claims and there can be no doubt that he understood the travel policy and he continued to fail to verify his travel claims and that constituted insubordinate and dishonest behavior. It closed by asking that the discipline not be disturbed and the claim remain denied because it was in accordance with the Carrier's disciplinary policy.

The Board has thoroughly reviewed the transcript and record of evidence and it is determined that the Investigation and appeal process met the guidelines of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

The Board notes that this is the first of two dismissal cases involving the same Claimant, with the other case being Award No. 195, Case No. 217.

Review of the transcript reveals that the Claimant was instructed to provide receipts of his travel claims on two separate occasions, the first being April 25, 2011. As stated above, on that date Claimant was sent a letter from the Carrier's Corporate Audit Team requesting documentation verifying his residency and travel for mileage claims made in March and April 2011. Claimant responded with proof of his residence, but did not provide receipts. Subsequently, Carrier Auditor Nelson spoke to the Claimant by telephone on May 9th clarifying the April 25th letter and the receipts requested. Despite that conversation and a follow up letter of May 16, 2011, Claimant did not provide the requested documentation. On May 23, 2011, Claimant attended a Safety Stand Down meeting where the Travel Policy was discussed.

It stands un-rebutted that the Claimant was advised of the Carrier's Policy of Verification of Rest Day Travel Allowance on at least two occasions including May 9, 2011, when he spoke to Corporate Auditor Nelson and May 23, 2011, when he attended a Safety Stand Down meeting.

On August 3, 2011, the Carrier scheduled a meeting with the Claimant to discuss its prior request of receipts and the Travel Policy. At that meeting the Claimant asserted he was not aware of the new Travel Policy requirements as he had been off work six months prior to the institution of the policy. At the conclusion of that meeting Carrier agreed to give the Claimant another chance and Claimant agreed to provide the necessary documentation upon the next request.

On August 4, 2011, Claimant was again asked to provide his travel receipts for mileage claimed on May 6, 12, 16, June 3, 17, July 1, 8 and 14, 2011. The record is clear that Claimant was sufficiently apprised of the Carrier's Travel Policy before being requested to provide the aforementioned receipts. Claimant provided receipts for four of the eight dates requested, two of which complied with the Carrier instructions.

The Organization argued that even though the Claimant did not have all of the receipts that did not prove that the Claimant did not travel or that he was dishonest. On page 33 of the transcript Carrier Auditor Bernard was questioned in pertinent part as follows:

**"Q: So I would- I would say that that was a no from your observation? That he could- there's no way of knowing- according to my question, just because he didn't have a receipt, does that prove that he did not go home or travel that-that- on his rest days?"**

**A: No it doesn't."** (*Underlining Board's emphasis*)

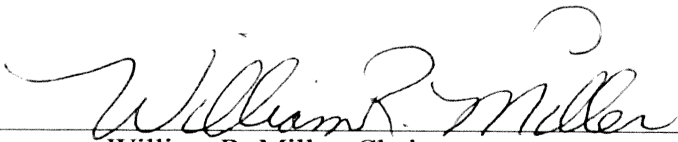
There is no doubt that the Claimant failed to provide the requested documents and that he was properly instructed in regards to the new Engineering Travel Allowance Policy. Substantial evidence was adduced at the formal Investigation that the Claimant failed to comply with the instructions contained in the Policy, but the Board is not persuaded that the Claimant was dishonest or that he did not travel as claimed.


The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately 16 years of service that included prior significant discipline. The Board has determined that dismissal in this instance was excessive, therefore, the Board reduces the discipline to a lengthy suspension that is corrective in nature, however, the Claimant is not entitled to any back pay, nor will he be reinstated to service because in the

companion case, Award No. 195, to this dispute involving the Claimant the Board upheld his dismissal.

**AWARD**

Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.

  
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William R. Miller, Chairman

  
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K. N. Novak, Carrier Member

  
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K. D. Evanski, Employee Member

Award Date: Aug. 2, 2013