

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 24

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

1. The discipline (Level 5 and dismissal) imposed upon Mr. R. V. Garcia on November 28, 2000 for alleged violation of Union Pacific rule 1.6, effective April 2, 2000, in connection with allegedly claiming excessive travel miles from his home in Pirtleville, Arizona to various locations while working as a system stabilizer operator between June 1, 1999 through May 29, 2000, was arbitrary, capricious and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, Mr. R. V. Garcia shall now be '...reinstated to his former position of Stabilizer Operator with seniority and all other rights restored unimpaired, compensated for all wages (straight time and overtime) and benefit loss suffered by him, and the alleged charge(s) be expunged from his personal record.'

Background

Claimant Reynaldo V. Garcia was hired by the Union Pacific Railroad (former Southern Pacific Transportation Company – Western Lines) on April 2, 1984. Thereafter, he established seniority rights in various classes with the System Track Subdepartment, and at the time of his dismissal, he was working on System Gang 9004, Monday through Friday, as a Stabilizer Operator, under System Rail Gang Supervisor K. Guerrero.

As a member of a system regional gang, Claimant was entitled to receive travel allowances in accordance with Article XIV, Section 1 of the September 26, 1996

Mediation Agreement. Under that Agreement, "...the carriers will pay each employee a minimum travel allowance for all miles actually traveled by the most direct route for each round trip."

While reviewing mileage allowances submitted by employees, auditors found that on 42 weeks during the period of June 1, 1999 through May 29, 2000, the mileage claimed by Claimant Garcia exceeded the mileage permitted under the Rand McNally Milemaker Program used by the Carrier. On November 2, 2000, Claimant was issued a Notice of Investigation, and following a hearing, which was held on November 21, 2000, he was found guilty of violating Rule 1.6 – Conduct/Dishonest. As a result, Claimant was assessed Level 5 discipline and dismissed from employment.

On January 4, 2001, the Organization appealed the dismissal. The claim was processed through the grievance procedure and discussed in conference. The parties were unable to resolve the matter, however, and it was therefore submitted to this Board for determination.

Opinion

The Organization contends that Claimant was denied a fair hearing because of the "perfunctory" manner in which the hearing officer conducted the investigation. The Organization also challenges the Carrier's reliance on a prior investigation, in which Claimant was charged with claiming excessive mileage but was not disciplined because of a procedural violation by the Carrier.

The Board has carefully reviewed the Organization's contentions in regard to alleged due process deficiencies, but has found them to be without merit. Claimant was

afforded a full and fair hearing, with representation, during which he had opportunity to testify, call witnesses, submit evidence, and confront his accusers.

As to the prior investigation, suffice it to say that for the reasons set forth below, there was substantial evidence establishing Claimant's guilt of the current charges, separate and apart from any connection to a prior incident of a similar nature. Moreover, while Claimant's disciplinary record was cleared in the prior case because of a time violation by the Carrier, as a result of the prior investigation Claimant was on notice as to the rules he was expected to follow for reporting mileage. He willfully violated those rules in the instant case and therefore was properly found guilty of dishonest behavior.

The Mediation Agreement was implemented in 1996. The Carrier repeatedly has told its employees that, under the Agreement, the miles reported must actually be traveled between their home and the work site by the most direct route roundtrip. Claimant's own testimony demonstrated that he did not use the most direct route, preferring instead to take more familiar routes or interstate highways rather than driving through small towns or construction zones. (Carrier Ex. C at 23, 31, 36). The documentary evidence in the Record further shows that during the 42-week period at issue, Claimant claimed 113,408 miles, as opposed to the Milemaker mileage of 96,446 miles via the most direct route. This resulted in Claimant being paid an extra \$4,400.00 to which he was not entitled.

The Organization asserted that Claimant was unaware of the Milemaker computer program, but the credible evidence is that employees in Gang 9004 were clearly told that they could request their miles to be calculated using the Milemaker program and that they could have the timekeeper enter their roundtrip miles. Undisputedly, Claimant did not

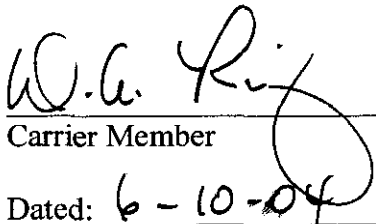
ask any timekeepers to put in his miles until after he was spoken to about his excessive miles. In this regard, Supervisor Guerrero testified credibly that the Carrier uses the Milemaker program and that all employees, including Claimant, had access to timekeepers who could enter their travel allowances. Unfortunately, Claimant elected to use his odometer and a different Rand McNally travel program instead of making certain that the routes he used conformed to the Milemaker program.

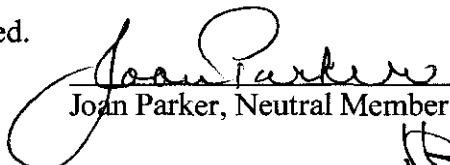
The result of Claimant's conduct was that the mileage he submitted was significantly beyond the Milemaker allowable mileage. As the Carrier emphasizes, the discrepancies were not merely 100 or 200 miles, but 400 to 800 miles. These discrepancies cannot simply be attributed to confusion or ignorance. This is especially true in light of the Carrier's prior investigation of Claimant, which, if it accomplished anything, should have put Claimant on notice that he had to travel by the most direct route or face serious disciplinary consequences.

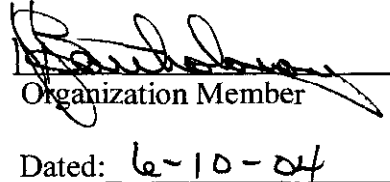
While Claimant was a long-term employee, his seniority did not give him license to violate established rules or to behave dishonestly. He chose to ignore the travel reporting requirements that were legitimately implemented pursuant to the Mediation Agreement. Therefore, the Carrier had just cause to assess Level 5 discipline.

Award

The claim is denied.


Carrier Member
Dated: 6-10-04


Joan Parker, Neutral Member


Organization Member
Dated: 6-10-04