

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 3

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. D. Krumweide by letter dated July 18, 2008 in connection with charges of claimed personal expenses for mileage and lodging allegedly appearing improper for the months of September, October, November and December while he was working on the Newtown Subdivision in 2007 was arbitrary, capricious, excessive and in violation of the Agreement (System File D-08-610-018/8-00516).
2. As a consequence of the violation referred to in Part (1) above, Claimant D. Krumweide shall now receive ‘. . . reimbursement to service with seniority unimpaired and for all lost wages, including but not limited to all straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier’s arbitrary, capricious, and excessive discipline in dismissing Claimant from service.’”

FINDINGS:

By notice dated March 14, 2008, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with alleged claimed personal expenses to which the Claimant was not entitled. The hearing was conducted, after a postponement, on July 7, 2008. By letter dated July 18, 2008, the Claimant was informed that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier’s service. The Organization filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was afforded his due process rights, because there were no procedural violations in the handling of this matter, because the facts developed support a finding of responsibility, and because the discipline imposed was not excessive. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to substantiate all of the charges in this matter, because the Claimant acknowledged making an inaccurate claim for expenses dated November 25 through 28, 2007, and he made multiple attempts to correct this inaccuracy, because the Claimant did not attempt to be dishonest or defraud the Carrier, because it is undisputed that the Claimant was suffering from physical/mental health issues during the time period at issue, and because the Carrier's decision to dismiss the Claimant was capricious, excessive, improper, and unwarranted.

The parties being unable to resolve their dispute, this matter came before this Board.


This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of falsifying his expenses and failing to accept responsibility for his wrongdoing. The record is clear that while working in the Newtown Subdivision from September through December 2007, the Claimant made claims for lodging and mileage which were improper. The Claimant was afforded a due process hearing and was properly found guilty of the serious offenses with which he had been charged. The Claimant admitted that he did not stay in some of the hotels and falsified his expense reports.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was properly found guilty of engaging in what can only be termed as theft from the Carrier. Given the seriousness of that offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.

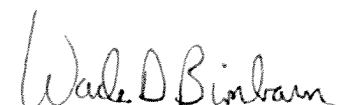


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/28/2012



ORGANIZATION MEMBER

DATED: 10/12/12