

Award No. 14

Case No. 14

Docket No. 77-23

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
Texas and Louisiana Lines

Statement of Claim: Claim of B of M of W E and request "that Mr. F. M. Foshee be reinstated to the position of welder and that he be paid for all time lost, beginning November 5, 1976, and continuing until such date he is reinstated with all seniority, vacation, insurance and other rights unimpaired. Also, that this charge be stricken from his record.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant, a Track Supervisor, was dismissed from Carrier's service November 5, 1976 as a result of being charged with falsifying his expense account as it concerned lodging expense. Claimant, upon request, was given a hearing with no resulting change in discipline therefrom.

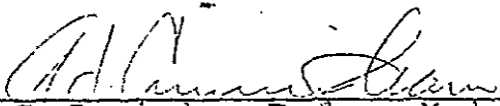
The Board finds no substantive procedural error to void review of this case on its merits. The record provided sufficient evidence to support Carrier's conclusion that Claimant had misused his expense account. Carrier, as trier of the facts, chose to believe the testimony of its witnesses over that of Claimant. The evidence is susceptible of the conclusion drawn by Carrier. Essentially it was shown that Claimant was told to stay at a certain motel at Shreveport. He didn't. He was told to file a receipt when staying there but one night, even though the instructions covering expense forms indicated such is necessary only when more than one night is involved, Claimant did not file any receipts. Claimant was alleged to have told the Division Engineer that he went home to Timpson, Texas, on such nights. Claimant denied this and filed at the investigation a statement from his brother, who lived in Shreveport, that

Claimant stayed with him and paid him the same rates as the recommended Shreveport motels.

The Board concludes that while Claimant had at least technically violated expense instruction, such was not wilfully perpetrated to defraud Carrier. The expense instructions are vague. They, in and of themselves, lend cause to situations of this type arising. Claimant was entitled to be paid for expenses accrued on the dates specified, if accrued. The written instructions are silent on, as here, the one situation. These instructions should be codified to cover situations as in here. Claimant's unblemished 21 year record, viewed in light of these other factors, impells his reinstatement to service without pay. Any reference to dishonesty, if any, on his service record should be removed therefrom.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
A. J. Cunningham, Employee Member

  
R. W. Hickman, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, September 7, 1977.