

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY CARRIER

Case No. 518 – Award No. 518 – D. Richmond
Carrier File No. 14-19-0249
Organization File No. 2409-SL13C5-1915

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Donny Richmond (1639632), Seniority date March 03, 2005, for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for: 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service. 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended. 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed from service commencing June 12, 2019, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

FINDINGS:

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, D. Richmond, had been employed by the Carrier since 2005. On June 12, 2019, following an investigation, the Carrier found Claimant guilty of misconduct and theft after he used a Carrier fuel card to make personal purchases, misused a Carrier rental car for personal use, and misused other employees' IDs to purchase fuel on February 14, 15, 23, and 27, 2019. The Carrier determined that Claimant had violated Maintenance of Way Operating Rule (MOWOR) 1.6 Conduct and dismissed him from service.

The underlying facts of this case are not in dispute. At the relevant time, Claimant was the Foreman of a gang in Corsicana, Texas. Carrier Compliance Program Manager Wendell Parker testified at the investigation that, in about mid-March, 2019, he learned of possible misuse of a Carrier fuel card and contacted Carrier Resource Protection to open an investigation. Various records were reviewed and, on or about April 18, 2019, an Investigating Officer interviewed Claimant about incidents on February 14, 15, 23, and 27, 2019. Claimant gave a written statement, which was entered into the hearing record.

At the hearing, Claimant confirmed the accuracy of the written statement, and admitted that he used the Carrier's rental vehicle for personal reasons, including trips to Louisiana, without approval; used a colleague's employee number to make several purchases; and used the Carrier fuel card to make personal charges, including buying gas for other individuals in exchange for cash, between February 14, 2019 and February 27, 2019. Claimant testified that he had been experiencing personal and family problems which led him to relapse into alcohol addiction, which was the cause of his actions. He expressed deep regret and explained that he had offered to reimburse the Carrier. Roadmaster Wyrick Tatum testified that Claimant called him after his interview with the Resource Protection Officer, told him what had happened, and explained that he had suffered a relapse of alcoholism.

The Carrier first addresses the Organization's procedural argument that the investigation was not held in a timely manner because Mr. Parker learned of the issues in mid-March 2019 and the investigation should have taken place no more than 15 days later. The Carrier states that it was obligated to conduct a full, extensive investigation, culminating in the interview of Claimant on April 18, 2019, which is when the Carrier had complete first knowledge. The Notice was issued on April 24, 2019, with the investigation scheduled for April 30, 2019. There was no timeliness violation.

On the merits, the Carrier contends that it has met its burden of proving Claimant's guilt by substantial evidence. Claimant admitted that he used the Carrier's rental vehicle for personal trips and used the Carrier fuel card for personal charges, in violation of Carrier Rules. Despite Claimant's assertion that he had relapsed, he also admitted that he knew how to prevent his behavior but chose not to take steps to protect the Carrier nor his colleagues. The Carrier urges that it has met its burden of proving Claimant's guilt by substantial evidence, and it well established that offenses such as these justify dismissal.

The Organization first contends that the investigation and resulting discipline were procedurally improper and that the discipline should be overturned on that basis. Specifically, they rely on the testimony of Mr. Parker and Mr. Tatum that they received first knowledge of the

alleged misconduct mid-to late-March 2019. The Organization asserts that the investigation should have taken place no later than 15 days after they received first knowledge.

On the merits, the Organization argues that Claimant's misconduct should be mitigated by the fact that he was honest about his actions in both his written statement and investigation testimony, and because he suffered an alcoholism relapse. The Organization also cites Claimant's offer to pay restitution to the Carrier as a mitigating factor. The Organization urges that dismissal is unwarranted and the claim should be sustained.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity which deprived Claimant of his right to a fair and impartial investigation. The record is clear that the Carrier conducted a thorough and complete investigation culminating in Claimant's interview. Upon receiving that full information, the Carrier proceeded promptly and in accordance with the applicable rules.

Turning to the merits, Claimant admitted his misconduct in his written statement and at the investigation. It is well settled that such admissions are sufficient to satisfy the Carrier's burden of proving his guilt by substantial evidence.

With respect to the penalty, we acknowledge, as the Organization points out, that Claimant experienced personal hardship and was honest, forthright and remorseful concerning his actions. However, it is well settled that dishonesty and theft are among the most serious offenses an employee can commit, as they cause irreparable damage to the employee/employer relationship. It is universally recognized that such conduct is grounds for dismissal, even for a first offense. The Organization's arguments are essentially requests for leniency, but it is well established that leniency is the province of the Carrier, not this Board. We cannot find that the Carrier's decision to dismiss Claimant is extreme, unwarranted, or unjustified.

AWARD


Claim denied.



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



JEFFERY L. FRY
Organization Member

Dated this 16 day of May, 2023.