

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6394

Brotherhood of Maintenance
of Way Employees Division – IBT Rail Conference

and

Norfolk Southern Railway Company
(Former Norfolk & Western Railway Company)

Case No: 80
Award No: 80

Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: December 14, 2017

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. M. Fife, issued by letter dated March 31, 2016, in connection with his alleged conduct unbecoming an employe in that he submitted false payroll Information on his Norfolk Southern Explanation of Travel Expense Forms for travel allowance reimbursements on numerous occasions since October 29, 2015 and also obtained another employe’s fuel receipts without authorization and used those receipts in a claim for his own travel allowance on numerous occasions since December 10, 2015 was arbitrary, capricious and unwarranted (Carrier’s File MW-ATLA-16-14-SG-185 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Fife shall be reinstated immediately, exonerated of all charges and compensated all lost wages, including overtime, credits and benefits denied to him, commencing February 18, 2016 until he is placed back in service or until this matter is resolved.”

FINDINGS:

Public Law Board No. 6394, upon the whole record and all of 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.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

In 2015, Claimant in this matter held the position of Foreman on Carrier's Designated Program Maintenance Gang T & S-31. As a various headquartered employee, Claimant was entitled to Weekly Travel Allowance ("TA") to and from his residence of record in Holiday, Florida during rest periods. Because that round trip was approximately 1,100 miles, Carrier instructed Claimant and one other employee on the gang making a similar round trip for rest periods to submit gas receipts with their Travel Reimbursement Request Forms.

Beginning in 2014 and through mid-October 2015, Claimant and his co-worker car-pooled to and from their homes to the job in Pennsylvania and shared the expenses. In late October, 2015 personal circumstances caused the two employees to cease riding together and they began submitting separate individual Travel Reimbursement requests.

Claimant, in November 2015, began turning in Norfolk Southern Explanation of Travel Expense Forms reflecting travel not to his home in Florida, but rather to Marion, Ohio. Those forms were not processed by the Gang Supervisor as travel allowance is only for travel to and from the residence of record. Claimant further tendered Travel Reimbursement Requests for the rest periods of December 4th – 7th and December 10th – 14th that were similarly not processed because there were no gas receipts accompanying them.

In January, 2016 Claimant began working on a different gang, Carrier's Designated Program Maintenance Gang T & S-8. Claimant complained to the Organization about not being reimbursed for the rest period from December 10th – 14th and on February 2, 2016 his representative filed a time claim on his behalf with the Carrier's General Division Engineer.

On February 17, 2016, the record reflects, that same General Division Engineer ("GDI?") was approached at a training session by Claimant's former car-pooling partner who expressed

concerns that his gas receipts were being used by another employee. Upon further review of the concern brought to his attention, the General Division Engineer discovered that the Time Claim submitted by the Claimant's representative contained receipts that were not the Claimant's, but instead were receipts with the other employee's name and credit card numbers. Moreover, the General Division Engineer also found that Claimant, in his position as Foreman for Gang T & S-31 had access to the gang office car where expense forms and gas receipts submitted by the other employee were stored and that Claimant had submitted travel reimbursement forms in November, 2015 for travel not to home but to Ohio.

Claimant was summoned by letter dated February 23, 2016 to an investigation on March 14, 2016 in connection with: Conduct unbecoming an employee in that he (1) submitted false payroll information on his Norfolk Southern Travel Expense forms for travel reimbursements on numerous occasions since October 29, 2015; and, (2) that he obtained - - 's fuel receipts without authorization and used those receipts in a claim for his own travel allowance on numerous occasions since December 10, 2015.

The hearing officer found Claimant guilty as charged and he was dismissed from service by letter dated March 31, 2016.

The Organization claims that the Carrier violated Claimant's due process rights when it failed to attach the exhibits introduced during the Investigation to the transcript submitted to the Organization thereby depriving it of the use of the exhibits in the prosecution of its claim and appeals. Moreover, the Organization carps that the Carrier refused to share information with it prior to the investigation.

Additionally, with regard to due process violations, the Organization insists that Carrier fatally violated the Agreement because it did not hold a timely investigation within thirty (30) days of its first knowledge of a possible offense.

Finally, the Organization argues that the discipline imposed, dismissal, was arbitrary and unwarranted. The Organization points out that Claimant is a forty (40) year veteran with no demonstrated, fully upheld prior discipline. The Organization opines that Claimant should have first been given a verbal warning and then a non-disciplinary letter of counseling before any discipline was assessed.

In response to the Organization's first due process argument that the Carrier failed to attach exhibits introduced at the investigation to the transcript submitted to the Organization, the Carrier points out that those exhibits were provided to the Organization when they were introduced at the investigation. Regarding the Organization's complaint that Carrier provided no "discovery", the Carrier points to three (3) Awards: 3 NRAB, Award 16308, BRT v. CMSt. P & P (Ives), 2 NRAB, Award 12971, IBFW v. CNW (Yost) and PLB 5763, Award 4, BRC v. CSC (Hicks) that stand for the proposition that the Claimant is not deprived of any contractual rights by the Carrier's failure or refusal to furnish a list of witnesses or documents to be used in the investigation barring any Agreement provisions requiring discovery procedures.

In regard to the Organization's timeliness of prosecution argument, Carrier explains that Claimant had his Union Representative file a time claim on his behalf by letter dated February 2, 2016. However, the Carrier submits, there was no reason to suspect that there was any rule violation until the Claimant's co-worker brought his concerns to the General Division Engineer's attention at the February 17th training session. Once the Carrier started looking into the situation concerning the co-worker's receipts, suspicion arose with the Claimant's time claim. Six days after being "tipped off" by the co-worker, on February 17, 2016, Carrier summoned Claimant to an investigation that was held on March 14, 2016, all within the thirty (30) days of its first knowledge piqued by the co-worker's conversation with the GDE and well within the thirty (30) days required by rule.

In light of all of the evidence on the record and the Parties' respective arguments the Board concludes that Claimant's dismissal must stand. Violations such as those proven here, which involve dishonesty are extremely serious and warrant a most severe penalty. Based on the record

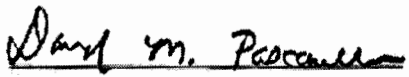
before us, we cannot say that the dismissal was arbitrary, unjust or unsupported by the record. Moreover, Claimant was afforded all procedural due process rights guaranteed by the Union contract. Hence, we can find no basis to sustain the claim.

Award:

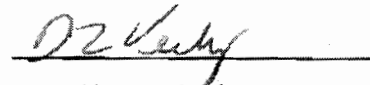
The claim is denied.



Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 6, 2018