

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6394

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 81
And)	
)	Award No. 81
Norfolk Southern Railway Company)	
(Former Norfolk & Western Railway Company))	
<hr/>		

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. C. Perkins, issued by letter dated March 15, 2016, in connection with his alleged conduct unbecoming an employe in that he submitted false payroll information on a number of occasions from November 23, 2015 to February 9, 2016 by entering allowances for meals and mileage that he was not entitled to receive, including but not limited to entering MH mileage reimbursements on Mondays, entering MM03 Dinner meal codes, submitting MH codes for eighty three (83) miles on multiple occasions when his reporting location changed numerous times between November 23, 2015 and February 9, 2016 and entering an excessive number of miles traveled between his reporting location and his home address was capricious, excessive, harsh, inappropriate and unwarranted (Carrier’s File MW-DEAR-16-12-J.M-173 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Perkins shall be returned to service, compensated for all lost time and restored with all rights and benefits.”

FINDINGS:

Public Law Board 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 cases.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant, at the time this matter took place, held a various headquartered position as a Dunbar Tractor-Trailer operator assigned to report at Toledo, OH. He had over ten (10) years tenure at the time of the occurrence in question.

As a various headquartered Tractor-Trailer Operator, Claimant, because he traveled home every day, was entitled under the current Agreement to an allowance for a lunch meal each day, a reimbursement at the IRS rate for actual mileage up to 120 miles, for the round trip home and back each workday and a flat \$30.00 payment for round trip travel between work and home over rest days.

Claimant, the evidence on the record revealed, submitted travel and meal reimbursement requests that far exceeded that to which he was entitled.

For instance, Claimant requested reimbursement for daily travel of eighty-three (83) miles, round trip when the actual mileage from his residence to the location of the Tractor-Trailer was thirty-one (31) miles round trip.

While various headquartered employees are permitted a flat-rate of \$30.00 travel pay to return home on rest periods, Claimant submitted requests for reimbursements equal to his daily submissions of eighty-three miles round trip for rest time travel.

Further, while the Claimant was entitled to a lunch meal for every day at work, he submitted reimbursement codes for dinner meals, which is greater than lunch meals.

This all occurred beginning on November 23, 2015 and continuing through February 3, 2016. On February 3, 2016 management held an operational meeting where Claimant's submissions were looked at, suspicion arose and Claimant's submissions were audited. On February 17, 2016 Claimant was charged and directed to attend an investigation to "determine his responsibility, if any, in connection with conduct unbecoming an employee in that he allegedly submitted false payroll information on a number of occasions from November 23, 2015 to February 9, 2016 by entering allowances for meals and mileage that he was not entitled to receive, including, but not limited to the following:

1. Entering MH Mileage Reimbursements on Mondays;
2. Entering MM03 Dinner Meal Codes;
3. Submitting MH Codes for eighty-three (83) miles on multiple occasions when his reporting location changed numerous times between November 23, 2015 and February 9, 2016; and,

4. Entering an excessive number of miles traveled between your reporting location and your home address.”

After a full investigation, the Hearing Officer found Claimant guilty as charged and dismissed Claimant from service.

The Organization asserts that the Carrier's discipline cannot stand based on procedural errors that it maintains should nullify the decision reached during the handling of the matter on the property. The Organization's complaints are based on Rule 30 – Discipline and Grievances, of the current Agreement, that states in relevant part:

Rule 30 (a) – An employee who has been in service more than sixty (60) calendar days shall not be disciplined or dismissed without a fair and impartial investigation, at which investigation he may be assisted by duly authorized representatives. He may, however, be held out of service, except for minor offenses, pending such investigation.

The Employee will be given not less than ten (10) days advanced notice, in writing, of the date of the investigation, which shall set forth the precise charges against him, with a copy to the general chairman. The investigation shall be held within 30 days of the first knowledge of the offense...

The Organization first avers that by taking Claimant out of service pending an investigation the Carrier prejudged Claimant. However, the last sentence of the first Paragraph of the rule stated above explicitly allows the Carrier to remove an employee from service for all but minor offenses. Falsification of payroll information is decidedly more than a minor offense.

Next, the Organization purports that it was prejudiced in representing Claimant by the Carrier's refusal to share documents and information in its possession with the Organization prior to the investigation.

There is nothing in Rule 30, as amended by the System Discipline Rule, or in any other rule of the Agreement, that requires the Carrier to supply documents or other evidentiary matter to the Organization prior to investigation.

The Organization contends that the charges against Claimant were not precise. As has previously been held by Referee Lieberman in 3 NRAB, Award 21118, BRAC v. NW, “the charge here gave Claimant notice that a particular incident was to be investigated and was certainly adequate enough to enable him to prepare his defense.”

Finally, the Organization insists that the Carrier violated Rule 30 by not bringing charges against Claimant for payroll submissions tendered in November and December, 2015 until February, 2016. The Organization's argument has merit.

The Carrier contends that it was not until management held an operational meeting on February 3, 2016 that it became suspicious of Claimant's reimbursement submissions and that February 3, 2016 was the date that it had first knowledge of an offense. The charging officer in this matter, in fact, had knowledge of Claimant's reimbursement requests as they were submitted in November and December, 2015 because he was the one who approved and paid them. To say that he had no knowledge of what was submitted before the February 3, 2016 operational meeting is disingenuous and the Claimant's supervisor must share responsibility for allowing those payments without verifying their accuracy. It appears to the Board that some of the problem could have been alleviated if Claimant had been instructed that he was entering the wrong payroll codes for meals and travel for rest periods at the time the submissions were made rather than waiting three months until the Carrier got around to reviewing what it had already had approved.

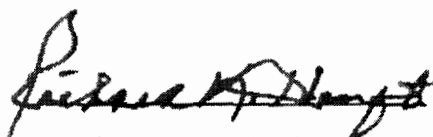
Nevertheless, the charges investigated also pertained to submissions made for the dates of January 14, 26, 27 and 28, when the Carrier's truck was picked up and returned to Warren Yard in Monroe, MI, a distance of 15.5 miles from Claimant's residence and for which Claimant submitted mileage of eighty-three (83) miles round trip. Erroneous submissions for mileage and meals were also submitted for February 3, 4, 8, and 9, 2016. Thus, the investigation of these submissions was timely and in accord with the Rule 30 time limitations. Moreover, the evidence presented during the investigation clearly proved that Claimant submitted false payroll information on an ongoing basis.

The Board, however, reviewing the record developed on the property determines that this matter concerns not so much intended dishonesty, but rather complacency and gross negligence. While the Board can reluctantly concede that it is possible that Claimant did not realize that he was consistently entering the wrong meal reimbursement code or that he was supposed to enter a TZ code rather than an MH code for travel to and from home over rest periods, we cannot condone Claimant's submission of mileage amounts "guesstimated" from his residence to his Toledo, Ohio reporting headquarters at double the mileage and that he kept reporting the same mileage when, in fact, he had relocated the truck to Monroe, Michigan, even closer to his residence.

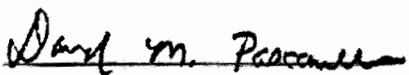
While the Board finds that Claimant's false payroll information submissions were made due to negligence and complacency rather than intentional dishonesty the Carrier is directed to reinstate Claimant to service without compensation for time out of service. Further, Claimant shall forfeit his Foreman and Assistant Foreman seniority.

AWARD

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date that two members of this Board affix their signatures thereto.



Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 8, 2018