

PUBLIC LAW BOARD NO. 7564

Case No. 117/Award No. 117
Carrier File No. 10-21-0069
Organization File No. C-21-D040-6
Claimant: J.D. Czarnecki

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim

By letter dated November 30, 2020, Mr. James D. Czarnecki received a Level S 30-day record suspension and a one-year review period because of his alleged “dishonesty and attempted theft of expenses and failure to comply with instructions regarding expense reporting.” The Claimant allegedly violated MWOR 1.6 Conduct, GN Corporate Rule Corporate Travel Card, and GN Corporate Rule Travel and Expense.

The Organization’s claim dated January 14, 2021, from George L. Loveland, Vice General Chairman, appealed the discipline and characterized it as arbitrary, capricious, and excessive. The Organization requested that the discipline outlined in the Carrier’s letter dated November 30, 2020, be “overturned and that [Claimant] be made whole for any losses associated with the outcome of this investigation as outlined above and that this discipline be removed from and no mention ...be placed on (sic) his personnel record.”

Facts

By letter dated April 23, 2020, the Claimant received notice that “[A]n investigation has been scheduled at 0930 hours, Thursday April 30, 2020, at...Galesburg, IL...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged dishonesty and attempted theft of expenses, and failure to comply with instructions regarding expense reporting.” After six postponements by mutual agreement, the investigation occurred on November 5, 2020, at 0900 hours.

Carrier Position

The Carrier avers that the investigation was fair and impartial and demonstrated by substantial evidence that Claimant dishonestly submitted out-of-pocket expenses that “did not actually take place.” Claimant admitted guilt, and the assessed discipline was not excessive, arbitrary, or unwarranted.

Organizational Position

The Organization asserts that the investigation was not fair and impartial. Claimant was presumed guilty of the charges before the hearing. The Organization claims the Carrier failed to comply with Rule 40, and the notice Claimant received failed to state the specific date(s) of the alleged misconduct. The Carrier could not meet its burden of proof because the record lacked sufficient facts and evidence.

Findings

Claimant is charged with violating MWOR Rule 1.6, which specifies that employees must not be dishonest, and for violating Corporate Rule, Corporate Travel Card. This rule applies to all BNSF employees issued a Corporate Travel Card and provides that the card must be used for all business expenses under the policy.¹ Claimant is also charged with violating GN Corporate Rule Travel and Expense. Prior to the investigation, Claimant’s supervisor questioned Claimant about discrepancies in Claimant’s expense reports.² The supervisor advised Claimant to review his expense reports and make necessary changes.³ At some point, Claimant conceded to his supervisor that his expense report contained inaccurate charges for out-of-pocket expenses. Claimant explained that his lack of computer knowledge limited his ability to correct the mistakes.⁴ Further, Claimant misunderstood the policy regarding the use of the Corporate Travel Card.⁵ Claimant’s admissions provided substantial evidence regarding the violations.

Claimant’s supervisor encouraged and provided time for Claimant to correct the discrepancies in the expense report. The investigation was fair and impartial and complied with the mandates of Rule 40. The investigation notice was issued only after it became clear that Claimant would not correct the discrepancies in the expense report.⁶

The Carrier’s Policy for Employee Performance Accountability (“PEPA”) classifies this violation as a stand-alone dismissible violation. PEPA, Section IV (D), Stand-Alone Dismissible Violation (1)(a) states the following:

¹ Various exceptions, inapplicable to the instant matter, are outlined under the policy.

² References to the Investigation transcript are referred to as (“Tr.”). Tr.11-12, 17.

³ *Id.*11-12, 20, 23.

⁴ *Id.*28.

⁵ *Id.*31.

⁶ *Id.*24. Supervisor Thompson testified that he wanted to give Claimant another opportunity to correct make the expense report. Thompson credibly testified that was why he resubmitted it on April 14, 2020. The investigation notice complied with Rule 40 in that it was issued on April 23, 2020, and scheduled to be heard on April 30, 2020.

Stand-alone Dismissible Violations include ... [t]heft or any other Fraudulent act that may be evidenced by the intent to defraud BSNF Railway or by taking of BSNF of BNSF Railway monies or property not due.

Dishonesty is viewed as a very serious offense, often resulting in dismissal.⁷
In the instant case, Claimant recieved a Level S 30-day record suspension and a one-year review period. The discipline assessed was acceptable to the Board in this case.

Award

Claim denied.

Order

This Board, after consideration of the dispute identified above, hereby orders that no Award favorable to the Claimant be made.



Zachary Voegel, Organizational Member



Joe Heenan, Carrier Member



Melinda Gordon, Neutral Referee

DATED: June 20, 2023

⁷ See, Third Division Award Nos. 37054, 37812, 22119, 39310; Public Law Board 5850.