

P.L.B. No. 7585
Case No. 27
Award No. 27

PUBLIC LAW BOARD NO. 7585

CARRIER FILE NO. 10-13-0302

ORGANIZATION FILE NO. C-13-D040-7

CLAIMANT: Dannie R. Cohn

Parties To Dispute:

Brotherhood of Maintenance of Way Employees Division – IBT
& BNSF Railway Company

Statement of Claim: *The Carrier violated the Agreement on April 12, 2013 when it dismissed Claimant Dannie R Cohn (1751320) for alleged violation of Maintenance of Way Operating Rule 1.6 – Conduct, dishonesty and falsification of Pay Code 55 receipts beginning December, 2011 and continuing forward while working on Kansas Division.*

Background Facts:

After receiving a hotline call about Claimant Dannie Cohn's reimbursements, the Carrier began an investigation, initially looking into Pay Code 65 reimbursements and eventually evaluating his submissions for reimbursement of weekend travel under Pay Code 55. The latter is the focus here.

Under Appendix 22 of the applicable collective bargaining agreement, a valid receipt is defined as follows:

...[E]ither an original bona fide business machine printed receipt for a purchase, or an original bona fide printed transaction, either of which must be a record of a transaction consummated by the employee at his/her home residence location over the claimed rest day trip home. Acceptable valid receipts must legibly contain the name of the business from which secured, the employee's home residence city name, and the date of the purchase or business transaction. The date on the valid receipt must coincide with the date of the claimed weekend home trip. If the valid receipt contains bank account numbers or credit card numbers, those numbers may be blacked out so long as the remainder of the required information remains legible.

In addition, the submission form has several blocks, one of which must be checked. The one indicating a proper receipt has been attached also states: "Remember, a valid receipt must be an original, contain a business name, the employee's home residence city name and the date of purchase which must coincide with the date of the claimed trip." The submission form requires the employee's signature.

The Carrier's investigation surfaced submissions which failed to meet these requirements. Named business were found not to exist, addresses were found to be false and seven of the submitted receipts were handwritten as opposed to machine generated. Claimant was interviewed, and during the course of the interview, he admitted falsifying receipts, but asserted he did have valid receipts for the weekends in question, though he claimed he repeatedly forgot to bring them in. He contended he generated the false receipts in order to receive pay for trips home that were otherwise valid. The Carrier concluded that Claimant was in violation of the rule prohibiting dishonesty and falsification, and issued a letter of dismissal.

Opinion of the Board:

The Organization strongly objects to Claimant's interview as being in actuality an investigation constituting a denial of negotiated due process protections. After giving this argument a great deal of study, the Board cannot agree. The required notice must precede investigation of an employee who is "alleged to be at fault." Under the

Organization's analysis, the Carrier would be forced to find an employee at fault without ever hearing that employee's side of the story. In the Board's view, such an approach is unreasonable and contrary to the deliberate and thoughtful exercise of managerial discretion.

Significantly, Claimant at no time asked for Union representation, requested that the interview be halted or objected to the recording of the interview. Indeed, he affirmatively gave his assent to the recording. Given these facts, the interview itself was not improper. During the course of this interview, Claimant admitted to falsifying some of the receipts he submitted.

The Organization alleges Claimant was improperly forced into his admission with threats of being charged with fraud and theft. Certainly, it appears there was a fair amount of tension when addresses and businesses could not be located or explained. However, when it became clear that Claimant had no explanation for the discrepancies and improprieties in his receipts, it was not unreasonable for the interviewer to point to the obvious seriousness of the matter. Indeed, to gloss over the gravity of falsified records would have mischaracterized the situation and risked misleading Claimant about his circumstances. Significantly, Claimant did not retract his admission during the Investigation.

The Organization insists management was aware of Claimant's actions long before he was notified of any investigation. This argument, again, actually works against the Organization's best interests. Management certainly received the hotline call long before interviewing Claimant. However, it was not until it had examined records, compared dates and attempted verification of business and addresses that management had questions for Claimant. As stated earlier, management would have been remiss to jump to a conclusion based on its findings without hearing Claimant's side of the story. And it would have been equally remiss to attempt an interview of Claimant before having fully investigated the relevant facts.

The Organization has alleged that the hearing officer failed to conduct a fair and impartial hearing. Though the hearing officer did indicate some confusion about when

objections are properly aired, in point of fact, the Organization had a full and fair opportunity to air its objections; it clearly articulated its protest of evidence regarding receipts submitted several months prior to the investigation. This objection was properly overruled since the Carrier learned of the problem about multiple receipts at the same time.

The evidence shows Claimant submitted eight handwritten receipts to the Carrier:

12/10/2011	CS Public Storage	Company does not exist
12/1/2012	storage	Address does not exist
12/9/2012	H&H Storage	Company does not exist
1/6/2013	CS Public Storage	Company does not exist
1/20/2013	S & D Carpet	Company does not exist
2/2/2013	Security Self Storage	Company does not exist
2/9/2013	Gallagos Trash	Company does not do business in Colorado Springs
2/14/2013	Snow removal	No existing business

In addition, false and varying names were used when the individuals were the same person. During his interview, Claimant made a number of inconsistent statements that are troubling. He said he did not have a receipt book, then admitted that he had one. [TR58]. He admitted he made addresses up. [TR 60] He admitted that the Mike and John named in the submitted forms are actually the same person and that Danielle and Sonya are also the same person. He first said he did not know whose signature was on the Gallegos receipt, then said 'Kevin' gave it to him.

Claimant's explanation was that he was in a panic to get his receipts in. He had previously been assigned to a super surfacing gang where he was never required to save receipts for anything and was having trouble adjusting to the need to save them. He claimed he kept forgetting to bring in his receipts after the weekend, so to expedite things, he simply fabricated handwritten ones in order to get the reimbursement he

deserved. He did not choose to use the more administratively difficult route of late submission.

He denied trying to steal from the Company and provided a number of receipts which indeed validated purchases made in Colorado Springs during weekends for which he was compensated based on the improper, handwritten receipts. According to Claimant, after he initially submitted a handwritten receipt and was compensated, he continued to do so because there was no rejection or negative feedback.

Though the evidence does not convince the Board that Claimant was stealing from the Carrier, we feel the dismissal must stand. An employment relationship is built on trust. Claimant was entrusted with submission of valid forms without going through a supervisor. He had the option of utilizing a more cumbersome process for submitting late receipts, but chose not to do so because he viewed the process as a hassle. Instead, he elected to completely falsify documents and submit them to the Carrier, repeatedly affixing his signature to the form verifying that his receipts met the criteria for validity.

These criteria are not to be taken lightly; they were negotiated between the parties with great specificity, and are formally expressed in the collective bargaining agreement. There is no contention that Claimant's submissions met these negotiated criteria.

More importantly, Claimant took it upon himself to ignore requirements and submit information to his employer that he knew to be false, misleading and fabricated. He put his need to be paid immediately over the Carrier's need for trustworthiness in its workforce. In so doing, he breached a fundamental and essential element of the employment relationship: truthfulness. The Carrier cannot reasonably be expected to rely upon the judgment of this employee in the future.

AWARD:

The claim is denied.

Patricia T. Bittel

Patricia Thomas Bittel
Chair and Neutral Member

Donald J. Merrell

Donald Merrell,
For the Carrier

May 22, 2014

Gary L. Hart

Gary Hart,
For the Organization

Dated: April 17, 2014