

Public Law Board No. 7633

PARTIES) **Brotherhood of Maintenance of Way Employees Division**
) **– IBT Rail Conference**
TO)
) **and**
DISPUTE)
)
) **Union Pacific Railroad Company (former Missouri Pacific Railroad**
) **Railroad Company)**

Members of Board:

Jeanne M. Vonhof, Chairman and Neutral Member
Chris Bogenreif, Carrier Member
John Schlismann, Employee Member

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Jones, by letter dated March 30, 2021, for an alleged violation of Rule 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instructions; Item 10-I: Union Pacific Railroad Policies – Statement of Policy on Ethics and Business and Conduct – Critical; and additionally 1.6 Conduct – which stipulates ‘Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.’ was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP879BF21/1757632 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Jones shall be returned to work and

‘... be made whole for all financial loses as a result of the alleged violation, including compensation for all wages lost, straight time and overtime, to be paid at the rate of position assigned at the time of removal of service, beginning with the day he was removed from

service and ending with his retirement date. This amount is not to be reduced by earnings from alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had he not been removed from service. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land and any other personal items that may be garnished from him for lack of income related to this dismissal.

In short, we herein make the demand that the Claimant be made “whole” for any and all losses related to his dismissal from service.

It is hereby stated that Mr. Jones be fully exonerated, and all notations of the dismissal be removed from all Carrier records.’ (Employees’ Exhibit ‘A-2’).”

Findings of the Board

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended and that the Board has jurisdiction over this dispute.

The Claimant, Mr. John Jones, was provided with notice that he was being investigated to determine his responsibility for allegedly falsifying his mileage reporting location which allowed him to gain per diem to which he was not entitled for February 16 through February 23, 2021. The investigation was held on March 19, 2021, and, via letter dated March 30, 2021, the Claimant was dismissed. The Carrier concluded from the evidence provided at the investigation that the Claimant

falsified his mileage reporting location and violated MWOR 1.6 Conduct - Carelessness; Rule 1.13 Reporting and Complying with Instructions; Item 10-I Union Pacific Railroad Policies – Statement of Policy on Ethics and Busing and Conduct – Critical. Based upon these determinations and the language in 1.6, the Carrier dismissed the Claimant from service.

The Company's "Per Diem and Mileage Allowances for BMW Employees," Portion G states,

"Positions established under this Rule will be bulletined with assigned headquarters of 'on line.' Employees assigned to such positions who reside more than fifty highway miles from their daily assigned work locations will receive allowances as set forth in Rule 36(b)..."

The Claimant was charged with claiming per diem to which he was not entitled under this rule, because he did not live more than 50 miles from his assigned work location in Carlinville, IL. Track Supervisor Brett Gehrig presented evidence that he had a one-on-one discussion on February 3, 2021 with the Claimant in which they discussed several matters, including Claimant's entitlement to per diem for travel from his home to this assigned location. The Supervisor testified that he told the Claimant that it was not acceptable to charge per diem from his home to the Carlinville depot location. He said that the Claimant admitted that it was only 49 miles from Carlinville to his home but said that he travelled to Carlinville by another route that was longer than 50 miles.

The Claimant worked mostly from the Wood River, IL location in early February but beginning on February 9 and for the rest of the month he was assigned to the Carlinville location. The Timekeeper who filled out the records for February 9 did not include per diem for the Claimant for traveling to Carlinville. The Claimant became Timekeeper for the second half of the month and claimed per diem and mileage for that period. Supervisor Gehrig testified that he texted the Claimant on February 23, asking if all of his time was accurate and correct. He said that the Claimant called him back and they "talked about his time." The Supervisor said he also talked to the entire gang on February 28 about the need for accurate records before time could be approved. The Claimant did not change his records.

The Supervisor reported that the Claimant had claimed per diem for travel to Carlinville during the second half of February when he was Timekeeper, but not for the first half of the month. A Corporate Audit was conducted, and the Claimant was interviewed on March 4, 2021. According to the summary of the audit, the Claimant stated at the time that his home is 49 miles from the Carlinville, IL depot. The audit showed that the Claimant had been charging per diem for travel to Carlinville, IL going back to 2020.

The Claimant testified that he understood that he was required to calculate any compensable travel using the route with the shortest distance. Claimant said that when calculating mileage for per diem claims he would enter his address into the Company computer and the computer would calculate the mileage. He acknowledged that when they entered the addresses during his audit interview, the computer program reported the distance between his home and Carlinville as 49 miles or less.

Mr. Jones stated that from his home computer he calculated the mileage at more than 50 miles. The Organization argues that this demonstrates that there was no intent on his part to defraud the Company. Claimant said that he first became aware at the time of the audit that the Company considered the distance to be 49 miles. However, this if he were calculating his per diem using the Company's system, as he said, he would have been aware that the distance was 49 miles. In addition, his responses during the audit interview suggest that he knew that it was improper to charge per diem for travel from his home to Carlinville because he said that he did not claim per diem when he was starting at Carlinville, but only when he started or ended work elsewhere. The records prove that he routinely claimed per diem for traveling to and from Carlinville. Supervisor Gehrig testified that 90% of the time the Claimant's gang began and ended their day at Carlinville. He presented production records that he said demonstrated that the gang was not even leaving the depot during the second half of February 2021 because of bad winter weather conditions.


Furthermore, Gehrig talked to the Claimant on February 3 about his route to work and reminded the Claimant on February 23 and 28 to make sure that his pay claims were accurate before they were submitted. Even if there is not substantial evidence that he gave the Claimant an order to change the numbers, he did place the Claimant on notice that there was a concern over his accurate reporting, and he instructed the Claimant to check and report his per diem claims accurately several times during February. Therefore, there is substantial evidence that Claimant deliberately violated Rule 1.13 Reporting and Complying with Instructions.

In addition, there were no procedural violations in the conduct of the investigation that would call for sustaining the claim. The charge was sufficiently clear for the Claimant and the Organization to understand the alleged violation. Furthermore, the Claimant's removal from service while he underwent an investigation for an accusation of dishonesty does not demonstrate that he was pre-judged as guilty. The Carrier had a legitimate interest in protecting its assets and the Claimant was provided a full and fair investigation in accordance with Rule 22 (a).

The Board concludes that based on this record there is substantial evidence that the Claimant knowingly made claims for per diem based on mileage to which he was not entitled under the Company's rules. The Claimant's conduct is a violation of MWOR 1.6 – Dishonest. The employment relationship requires that there be a high level of trust, especially for employees who work without close supervision and are responsible for submitting payroll information regarding their own hours, per diem and mileage records. The Carrier must be able to trust that its employees are entering this information accurately, and when an employee fails to do so, he loses the trust of the Company. For this reason, the Board concludes that the penalty of dismissal imposed here was not arbitrary, capricious or excessive.

Award

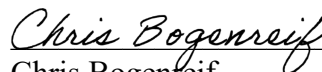
Claim denied.



Jeanne M. Vonhof
Neutral Board Member



John Schlismann
Employee Member



Chris Bogenreif
Carrier Member

Dated: July 11, 2024