

PUBLIC LAW BOARD NO. 7633

Case No.: 27/Award No.: 25

System File No.: LCS: 15883655/BMWED: UP412WF13 MPR

Claimant: G. W. Godfrey

UNION PACIFIC RAILWAY COMPANY)

-and-)

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Organization's Statement of Claim:

1. The discipline (dismissal) imposed on Mr. G. Godfrey, by letter dated March 13, 2013 for alleged violation of Rule 1.6 Conduct in connection with allegations that Mr. Godfrey falsified company documents and claimed per diem he was not entitled to on December 20 and 21, 2012 and various dates in January 2013 was without just and sufficient cause, unwarranted and in violation of the Agreement.
2. As a consequence of the Carrier's violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Godfrey's record and compensate him for all losses suffered as a result of the Carrier's unjust and improper discipline.

Facts:

By letter dated February 11, 2013, a corrected Notice of Formal Investigation, the Claimant was directed to report on February 21, 2013 "for investigation and hearing on charges to develop the facts and place responsibility, if any, that you allegedly falsified company documents by claiming you reported to a work location over 50 miles from your residence, when you did not. You also claimed per diem payments on these work days, resulting in monetary payments to you that you were not entitled to. It is alleged that these violations occurred while you were employed as a Welder on the Houston Service Unit. These infractions occurred on December 20-21, 2012 and numerous workdays in the month of January 2013. Union Pacific became aware of these alleged violations on January 29, 2013." The Notice further stated that a proven violation of Rule 1.6 Conduct (4) Dishonest would subject the Claimant to possible Level 5 UPGRADE policy discipline (dismissal) and that the Claimant was being withheld from service pending the results of the investigation.

Carrier Position:

The Carrier has shown a violation of Rule 1.6 by substantial evidence that establishes the wrongful assertion that the Claimant was over 50 miles from his residence. The Claimant provided no justification for his actions, which amounted to theft of time. The time taken to uncover the dishonesty does not excuse the behavior, which was serious enough to justify the dismissal. The investigation did not violate the Claimant's due process rights and was without procedural defects. The UPGRADE policy has been supported in prior Board awards, therefore the dismissal should not be overturned by this Board.

Organization Position:

The Carrier bears a heightened burden of proof because the allegation involves dishonesty and therefore must prove intent. The Carrier has not proved dishonesty because the evidence does not establish a dishonest intent. The Claimant did not falsify a payment document as he did not fill out the timesheet. He believed that his paycheck was correct. He was mistaken, but not fraudulent. Even if the Claimant violated Rule 1.6, dismissal was excessive for an employee with nine years of service and a clean disciplinary record. The Board has the power to remedy discipline that is punitive rather than corrective. Furthermore, Supervisor Monge simply approved the Claimant's payroll without reviewing it. Disapproval would have resulted in no payment.

Findings:

The Claimant was alleged to have falsified company documents and to have claimed per diem to which he was not entitled. The allegation that the Claimant, a member of Gang 9599, falsified company documents has been disproven. Mr. Marshall's admission that he entered payroll information, including tie-up locations, for all Gang 9599 members has not been contested. Therefore, the Board considers only the allegation that the Claimant received per diem to which he was not entitled.

The days involved are December 20-21, 2012 and January 3-12, 2013. Although the Claimant disputed the allegation of unwarranted per diem for December 20-21, 2012, the investigation testimony of MTM Kreifels that the tie-up location those mornings was the Lloyd Yard, under 50 miles from the Claimant's residence, is accepted by the Board.

During the investigation, the Claimant stated that he told nobody about the per diem pay in his paycheck because, in his words, "I looked at it, but I didn't even think about it" (TR-57). The Board accepts the explanation as reasonable and does not find that the Claimant knowingly kept per diem to which he was not entitled. However, the Board also finds that the Claimant acted negligently in violation of Rule 1.6 when he did not carefully review his paystub, which showed amounts included for straight time, overtime and per diem. Had he done so and reported the overage, it is likely that he would not be the subject of this case. He owed a much higher degree of responsibility to the Carrier and his imprudence is not excused simply because Supervisor Monge initially failed to discover the discrepancy. His imprudence merits severe discipline.

For reasons cited below, the Board finds dismissal excessive. First, the Carrier alleged two dishonest acts, at best proved one, and even then has not convinced the Board with substantial evidence that the Claimant was intentionally dishonest as opposed to negligent. The disciplinary notice referred to both allegedly dishonest acts. The Board is unsure of the discipline that might have been assessed had only the retention of the unwarranted per diem overage and not the falsification of company documents been considered. Second, bad judgment and imprudence is not the same as intentional dishonesty. Third, the Claimant's 9 ½ years of service with a clean record convinces the Board that he can be rehabilitated and that corrective discipline will serve the intended purpose. That said, the Board notes that the Claimant failed in his obligation to the Carrier. The Board emphasizes the likelihood that future seemingly dishonest behavior will surely result in dismissal.

Award:

Claim partially sustained.

Order:

The Board, after consideration of the dispute identified above, hereby orders that the Claimant be reinstated with a time served suspension. The Carrier is to make the award effective on or before the thirtieth (30th) day after the award is adopted.



Andrew Mulford, Organization Member



Katherine N. Novak, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
April 15, 2015