

PUBLIC LAW BOARD NO. 7633

Case No.: 30/Award No.: 28

System FileNo.:LCS:1583662/BMWED:UP408WF13

Claimant: G.C. Johnson

UNION PACIFIC RAILWAY COMPANY)

-and-

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES DIVISION

Organization's Statement of Claim:

1. The discipline (dismissal) imposed on Mr. G. Johnson, Jr. by letter dated March 13, 2013 for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6 Conduct (4) Dishonesty in connection with allegations that he falsified Company documents and claimed per diem he was not entitled to on various dates in October 2012, December 2012 and January 2013 was without just and sufficient cause, unwarranted and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Johnson'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 6, 2013, Notice of Formal Investigation, the Claimant was directed to appear 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 those 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 Helper (sic) on the Houston Service Unit. These infractions occurred on numerous workdays in the months of October 2012, December 2012 and January 2013. Union Pacific became aware of these alleged violations on January 29, 2013.” The Notice further indicated that confirmed allegations would indicate a violation of Rule 1.6 Conduct (4) Dishonest and subject the Claimant to possible Level 5 discipline (dismissal) under the UPGRADE

policy and that he was being withheld from service pending the outcome of the investigation.

Carrier Position:

The Carrier has shown by substantial evidence that the Claimant violated Rule 1.6 Conduct (4) Dishonest) when he falsified payroll information for himself and another employee. Statements from Carrier witnesses and the Claimant's variety of excuses for what he did prove the allegations. Supervisor Monge is not with the gang daily and his failure to initially find the discrepancies does not excuse the Claimant's behavior. The dishonesty involved stealing time, which is a serious infraction justifying dismissal, as shown by numerous on-property awards. With a workforce that often is not directly supervised, trust and honesty are essential. The Organization has not claimed due process or other procedural defects. Prior awards have confirmed the appropriateness of the UPGRADE discipline policy. There is no basis for the Board to alter the disciplinary action.

Organization Position:

The Carrier has not met the higher standard of proof required when an employee has been charged with dishonesty because intent to deceive or to be dishonest has not been shown. A mistake in judgment does not equate to dishonesty, particularly when the Claimant had a good-faith belief that per diem was due. Furthermore, Supervisor Monge initially did not take issue with the information submitted. Even if a violation occurred, the dismissal was excessive because it was solely punitive and not corrective.

Findings:

The claimant is alleged to have falsified company documents and thus to have claimed per diem to which he was not entitled in October and December 2012 and January 2013. Because the investigation established that the Claimant did not fill out payroll reports for Gang 4140 until December 15, 2012, the Board is concerned only with December and January 2013, when the claimant was responsible for completing these reports. The dates of concern are December 8-10, 2012 and January 5 and 6, 2013. January 20, 2013 is excluded as the Board accepts the claimant's assertion that he did not charge per diem for that day.

During the investigation, the Claimant stated that on various days in question he actually went initially to either the Navasota or the Millican Yard, depending on the date, and then was told by another employee that plans had changed and that he was to go to either Englewood or the Eureka Sub. In contrast, Supervisor Monge indicated that he would have told the claimant where to report and it would not have been to the Navasota or Millican Yard. There is also MTM Stewart's testimony that he saw the claimant in the Eureka Yard at about 6:30 AM on January 5-6, 2013, which would have been highly unlikely had the Claimant gone first to the Millican Yard.

Clearly, MOP Carter, who was the Hearing Officer and the manager who signed the notice of discipline, determined that credibility rested with the Carrier's version of the events in question. The Board is well aware that in the absence of unusual circumstances, in this appellate process the Hearing Officer's credibility determinations are to be accepted. The Board finds no basis for a departure from that practice. This is not a case where an inexperienced timekeeper inadvertently entered incorrect payroll information and thus unknowingly falsified company documents. Rather, this is a case where there is substantial evidence that the Claimant intentionally entered incorrect locations into the timekeeping records so that he would receive per diem to which he was not entitled. Supervisor Monge's failure to initially discover the discrepancies does not serve to excuse the Claimant's dishonesty, which amounted to a form of theft. There is abundant support in the form of on-property awards for a disciplinary response of dismissal in cases of dishonesty. The Claimant's behavior shattered the trust that the Carrier had placed in him so that even his 15 years of service are not sufficient to mitigate the dismissal.

Award:

Claim denied.

Order:

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Andrew Mulford, Organization Member

Katherine N. Novak, Carrier Member

I. B. Helburn, Neutral Referee

Austin, Texas
April 3, 2013