

PUBLIC LAW BOARD NO. 7633

Case No.: 32/Award No.: 30

System File No.: LCS: 1583664/BMWED: UP411WF13 MPR

Claimant: R. J. Marshall

UNION PACIFIC RAILWAY COMPANY)

-and-

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES DIVISION

Organization's Statement of Claim:

1. The discipline (dismissal) imposed on Mr. R. Marshall, 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 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 violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Marshall'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 copy of a Notice of Formal investigation, the Claimant was directed to attend a February 21, 2013 “investigation and hearing on charges to develop the facts and place your 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 on the Houston Service Unit. These infractions occurred on December 21-22, 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 could subject the Claimant to Level 5 discipline (dismissal) under the UPGRADE policy. Also, the Claimant was told that he was being withheld from service pending the results of the investigation.

Carrier Position:

The Claimant falsified payroll information for himself and others by claiming travel further than 50 miles from home and thus per diem to which they were not entitled. There is substantial evidence in the form of statements from Carrier witnesses and the Claimant's admission that he falsified the information and did not report the overage after receiving payment. Supervisor Monge is not with the gang daily and relies on the trustworthiness and honesty of employees. The Claimant provided no explanation for his actions, which violated Rule 1.6 and were serious enough to justify dismissal, as shown by numerous on-property awards. The time taken to discover the dishonesty did not absolve the Claimant of responsibility for his actions. The Organization did not contend that due process or procedural defects exist. The UPGRADE policy has previously met with Board approval; thus the Board must allow the discipline to stand.

Organization Position:

The Carrier has failed to meet the heightened burden of proof that comes with a charge of dishonesty because there is no proof of the Claimant's intent to deceive or to be dishonest. Mistakes in judgment do not indicate dishonest intent, particularly when Supervisor Monge's initial review did not indicate an issue with the information provided. Even if there was a violation, dismissal was excessive in that it was solely punitive rather than corrective and the Claimant believed he met the Carrier's expectations.

Findings:

During the investigation, the Claimant admitted reporting times and dates for Gang 9599, admitted that he claimed per diem for himself and his two gang members and acknowledged that the mileage shown on various MapQuest printouts was correct. There is more than substantial evidence that the Claimant took all steps necessary to obtain unwarranted per diem for himself and his gang members.

MTM Kreifels explained that the internet based Time Entry Portal (TEP) that the Claimant used to enter payroll information includes a computer screen with a warning when per diem is claimed for a tie-up that is within 50 miles of an employee's residence. Once the warning screen appears, the employee entering the information must manually override the warning in order to claim per diem. Because of this explanation, the Board concludes that the Claimant's assertion that he never saw the warning screen would be true only if he knowingly entered a location more than 50 miles from his residence so that the warning screen did not appear. MTM Kreifels' explanation of this critical element of the TEP provides strong evidence that the Claimant fully intended to enter false information in order to generate unwarranted per diem. Supervisor Monge's failure to identify the discrepancy does not wipe the Claimant's slate clean thereby turning an intentionally dishonest act—one involving a form of theft—into honest behavior.

Rule 1.6 includes the warning that "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.” The numerous on-property awards provided by the Carrier show that dismissal, even though not corrective, is an appropriate disciplinary action where dishonesty is concerned. The Claimant’s actions ruptured the trust placed in him and therefore marginalized his usefulness to the Carrier. The Board has no basis for other than a denial of the claim.

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 15, 2015