

PUBLIC LAW BOARD NO. 7633

Case No.: 33/Award No.: 31

System File No.: LC:1583060/BMWED:UP407WF13 MPR

Claimant: L. A. Junious

UNION PACIFIC RAILWAY COMPANY)

-and-)

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Organization's Statement of Claim:

1. The discipline (dismissal) imposed on Mr. L. Junious by letter dated March 13, 2013 for alleged violation of Rule 1.6 in connection with falsifying documents and claiming per diem not entitled to on numerous days 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, Mr. Junious must now be compensated for all losses suffered as a result of the Carrier's unjust discipline and afforded any other remedy prescribed by Rule 22(f).

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 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 numerous workdays during the month of January 2013. Union Pacific became aware of these alleged violations on January 29, 2013." The Notice further stated that substantiated allegations would constitute a violation of Rule 1.6 Conduct (4) Dishonest and could subject the Claimant to Level 5 discipline under the UPGRADE policy. In addition, the Claimant was informed that he was being withheld from service pending results of the investigation.

Carrier Position:

Substantial evidence proves the Claimant's violation of Rule 1.6. In addition to his admission that he input work locations for himself and his gang and that he claimed per diem to which he was not entitled, the Claimant did not report the overage after receiving his pay. Carrier witnesses further support the allegation. Supervisor Monge, who is not with the gang daily, relied on the Claimant's honesty and trustworthiness. The Claimant stole time from the Carrier and thus destroyed the trust placed in him. The seriousness of his actions justified dismissal, as established by numerous on-property awards. No procedural or due process arguments were raised by the Organization. Dismissal was in accordance with the UPGRADE policy approved by previous Boards. There is no reason for this Board to set aside the discipline.

Organization Position:

The Carrier has failed to meet the higher standard of proof that is its burden in cases involving alleged dishonesty as there is no showing of an intent to be dishonest. Even if the rule was violated, the dismissal is excessive because it was punitive rather than corrective.

Findings:

The Formal Notice of Investigation alleged that the Claimant falsified company documents and thus wrongfully claimed per diem "on numerous workdays during the month of January 2013." The testimony of MTP Shields and the accompanying document (Exhibit 4) establish that on January 2, 3, 7-10, 14-18 and 21-24, 2013 the payroll data, which the claimant acknowledged that he submitted for Gang 9833, showed that on each of these 15 days the falsified documents indicated a tie-up at Dayton when the actual tie-up was at 3601 McKinney St., Houston, TX. The Dayton location was more than 50 miles from the Claimant's residence, the demarcation for receipt of per diem, while the McKinney St. location was not. Confirming testimony, essentially redundant because the Claimant agreed that Exhibit 4 was accurate and that he had claimed per diem that was not due, came from MTM Mross, who stated that he saw the gang at the McKinney St. location on all of the 15 mornings except for January 10 and 18.

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 entered for a tie-up that is within 50 miles of the employee's residence. This can be manually overridden. The only way to avoid the warning screen would be to intentionally enter a location more than 50 miles from the residence, even if the information is false. Thus the Board makes the obvious conclusion that the Claimant intentionally falsified information time and time again during January 2013.

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 destroyed 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