

**PUBLIC LAW BOARD NO. 7660**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION - IBT**

**and**

**UNION PACIFIC RAILROAD COMPANY**

**Case No: 100  
Award No: 100**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed up Mr. J. Allen by letter dated January 26, 2017 in connection with allegations that he violated Rule 1.6: Conduct Dishonest and Rule 1.13: Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1748U-601/1682241 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Allen shall now be returned to service with all rights and benefits unimpaired, including compensation for all wage and benefit loss suffered and the charges expunged from his personal record."

**FINDINGS:**

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, Jeffrey Allen, has been employed by the Carrier for approximately 26 years and held the position of Roadway Equipment Operator at the time of his dismissal.

The Carrier alleged that the Claimant violated Rule 1.6(4): Conduct (Dishonest) and 1.13: Reporting and Complying with Instructions when he improperly submitted payroll documentation for the per diem allowance provided for by Section 3 of the 1992 Local/National Agreement. It maintains that the Claimant was dishonest when he received \$40,824.90 in improper per diem payments between 2012 and 2016. The per diem provision provides employees with additional compensation when they are headquartered and must travel more than 50 miles from their residence.

A hearing and investigation was conducted on January 13, 2017. On January 26, 2017, the Carrier notified him in writing that he was dismissed from service. The Organization filed its claim on February 23, 2017. The Carrier issued a final written decision sustaining the dismissal on June 21, 2017 and denied the subsequent appeals by the Organization. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

The Board does not find any procedural errors that nullify the need to review the merits of the dispute. We reject the Organization's claim that the Claimant's interview with the Carrier's Corporate Audit officials without union representation was a failure to provide a fair and impartial investigation. We have previously held that such interviews do not deprive the Claimant of a proper hearing unless the Agreement or other evidence in the record prohibits such activity. Nothing in the record prevents the Carrier from questioning employees during an internal investigation prior to the issuance of disciplinary charges. Once the Carrier decided to issue charges, the hearing and investigation, as governed by the Agreement, provides the Claimant with due process, union representation, and the ability to dispute the evidence and confront witnesses.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Upon review of all the evidence adduced during the on-property investigation, the Board here finds that the record contains substantial evidence that the Claimant violated Rule 1.6(4) and Rule 1.13. The Claimant's testimony and the documentary evidence confirm that he engaged in dishonest

conduct.

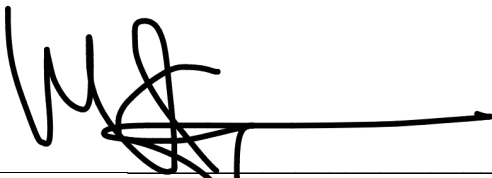
The record contains ample support for the conclusion that the Claimant knew of the per diem rule and intentionally engaged in manipulating his address of residence between several properties in which he claimed to have some ownership. The Claimant admits that he received per diem payments for days when he was working within 50 miles of one the properties he co-owned.

Legions of arbitration boards have found that acts of dishonesty are serious infractions where dismissal has been consistently upheld, irrespective of the previous disciplinary record or length of service. It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion or where the penalty imposed is not excessive. Based on the record, we have no basis to conclude that the Carrier was arbitrary or otherwise abused its discretion.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has provided substantial evidence that the Claimant engaged in dishonest conduct when he improperly received per diem payments.

**AWARD**

Claim denied.


  
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Michael Capone  
Neutral Member

Dated: January 17, 2019



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Alyssa K. Borden  
Carrier Member

Dated: 01/17/19

  
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Andrew M. Mulford  
Labor Member

Dated: 01/17/19