

PUBLIC LAW BOARD NO. 7660

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

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 107
Award No: 107**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (MAPS Training 1) imposed up [sic] Mr. M. Kuk, by letter dated February 6, 2017, in connection with allegations that he was in violation of Rule 1.13 Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1748U-901/1684894 UPS).
2. As a consequence of the violations referred to in Part 1 above, Claimant M. Kuk shall now have the discipline expunged from his record '*** and time that may have been loss (sic) due to your improper hearing and assessment of discipline. We further request that all other, if any, charges related to the discipline assessment be withdrawn and that Claimant be provided all per diem loss from the date of your violation. If Claimant is not being allowed to charge per diem to his residence in Elephant Butte New Mexico, we request that he be reimbursed for all per diem allowance and travel allowance that he has loss (sic) as a result of your improper actions against him while having an assembly point in El Paso, Texas and residing in Elephant Butte New Mexico.' (Employee's Exhibit 'A-2')."

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, Michael Kuk, has been employed by the Carrier since June 9, 1978 and held the position of Assistant Foreman when he was charged with violating Rule 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. The Carrier maintains that the Claimant was not following proper procedure when claiming a per-diem allowance and was being deceptive regarding his actual residence in order to qualify for the additional compensation. 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 20, 2017. On January 26, 2017, the Carrier notified him in writing that he was dismissed from service. The Organization filed its claim on April 4, 2017. The Carrier issued a final written decision sustaining the dismissal on June 21, 2017 and denied subsequent appeals by the Organization. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

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. The Board does not find any procedural errors that nullify the need to review the merits of the dispute. 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 1.13. The Claimant's testimony and the documentary evidence confirm that he did not follow proper procedure for recording his actual residence and for submitting requests for per-diem allowances.

The record contains ample support for the conclusion that the Claimant admitted he was residing within 50 miles of his work location, which would exclude him from being

eligible for a per-diem payment. As such, the Board does not find it necessary to address any other aspects of the dispute.

Legions of arbitration boards in the industry have found that leniency is reserved to the Carrier where there is no abuse of discretion. We find no basis in the record to conclude that the Carrier was arbitrary or otherwise abused its discretion in assessing a MAPS Training 1 in accordance with its policy.

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 improper reporting and complying with the per-diem rule.

AWARD

Claim denied.



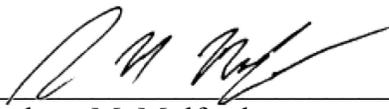
Michael Capone
Neutral Member

Dated: January 17, 2019



Alyssa K. Borden
Carrier Member

Dated: 01/17/19



Andrew M. Mulford
Labor Member

Dated: 01/17/19