

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 127
Award No: 127

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. B. Bailey, by letter dated June 21, 2017, in connection with allegations that he was in violation of Rule 1.6 Conduct and Rule 1.13 Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1748U-905/1690510 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Bailey shall now have the discipline expunged from his record and be “*** compensated for all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service excluding all outside wages. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land and any other personal items that may be garnished from him for lack of income related to this dismissal.’ (Employees’ Exhibit ‘A-2’).”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is

duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

At the time of incident, the Claimant was assigned as an Extra Gang Laborer and had approximately 9 years of seniority. The Carrier alleged the Claimant improperly collected per diem and mileage allowances that he was not entitled to.

On May 9, 2017, the Claimant was questioned by Carrier auditors regarding his residence and his claimed per diem allowance. By letter dated May 23, 2017, the Carrier directed the Claimant to report for a formal investigation into the matter, which was held on June 7, 2017. Following the investigation, and by letter dated June 21, 2017, the Claimant was notified that the charges against him were sustained and that he was dismissed from service. In relevant part, the June 21, 2017 letter states the following:

“...After carefully considering the evidence adduced at the hearing, I find that the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 05/09/2017, while employed as a Ex Gng Laborer, you gained per diem and mileage that you were not entitled by using an address of record you did not reside. This is a violation of the following rule(s) and/or policy:

1.6: Conduct - Dishonest

1.13: Reporting and Complying with Instructions

Additionally, Rule 1.6: Conduct stipulates 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. Indifference to duty or to the performance of duty will not be tolerated.

Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad...”

The matter progressed in the normal fashion and is now before the Board for final resolution.

In summary, the Organization argues a) the Claimant was denied a fair and impartial hearing as required by the Agreement, b) the Carrier failed to meet its burden, c) the dismissal was arbitrary and unwarranted, and d) the proper remedy is as stated in the Statement of Claim.

In summary, the Carrier argues a) the Carrier provided substantial evidence, including Claimant’s admission of guilt, to prove that the Claimant acted in violation of the rules as set forth, b) the seriousness of the Claimant’s violation fully supports the discipline imposed, c) the

Claimant was afforded all the elements of due process required by the Agreement, and there were no procedural defects serious enough to void the Carrier's action, and d) the requested remedy is excessive, improper, and not grounded in the Agreement.

After a thorough review of the record, the Board finds the Carrier met its burden in proving the Claimant gained per diem and mileage he was not entitled to. The record reveals the Claimant entered his Grandmother's Metolius, Oregon address into the Carrier's database as his permanent residence on October 31, 2014, and has since been using that address for claiming mileage and per diem. The Claimant testified during the June 7, 2017 investigation that his permanent residence was at his Grandmother's house in Metolius, OR, and he provided supporting documentation to justify such.

Although the record is replete with argument as to whether the Claimant resided in his trailer or at his Grandmother's home, the Board found the discussion to be inconsequential. The Claimant was claiming mileage and per diem based upon his Grandmother's house in Metolius, OR. Focusing only on mileage allowance, the record reveals the Claimant made claim and was provided mileage allowance four times from 11/1/14 through 12/16/14, twenty-one times in calendar year 2015, fifty times in calendar year 2016, and fourteen times from 1/3/17 through 5/1/17. Yet, during the investigatory hearing, the Claimant testified that he spent several weekends out of the year at the Metolius address. The sheer number of actual mileage claims and payments made to the Claimant far exceeds the Claimant's testimony as to the frequency of trips to the Metolius address. Over the 30 months detailed above, the Claimant made claim and was paid mileage on 89 separate occasions. As such, the Board finds the magnitude of mileage claims made by the Claimant to be unreliable, given his testimony as to limited regularity of visits to the Metolius address.

As indicated above, the Organization argued the Claimant was denied a fair and impartial hearing, noting that the charge letter was flawed and lacked specificity. The Board respectfully disagrees. Given the totality of the record here and the fact that the Claimant was questioned by Carrier auditors before the formal investigation, the Board finds that the Claimant had enough information regarding the charges against him prior to the formal investigation, and that the investigation itself was fair.


Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD:

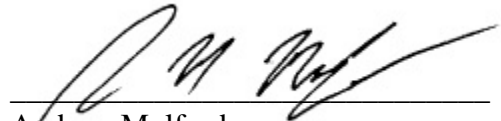
The claim is denied.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019