

PUBLIC LAW BOARD NO. 7660
CASE NO. 14

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Claimant W. Hill by letter dated July 8, 2013, in connection with allegations that he was dishonest with Union Pacific Auditors, dishonest in using computer access credentials to approve time and dishonest in taking a computer training module was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D-1348U-313/1589123 UPS).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now remove any mention of the discipline from Claimant W. Hill’s personal record, fully reinstate him with all vacation, insurance and retirement benefits, along with compensation for all straight and overtime work opportunities missed as a result of the inappropriate discipline.”

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.

This is the same Claimant whose dismissal for dishonesty on June 7, 2013 was overturned by the Board in Case No. 11. While in non-working status, and after the May 20, 2013 Investigation on his first dishonesty charge, Claimant was re-interviewed by Carrier's Audit Department on June 4, 2013, along with others in the North Platte Service Unit, including MTP G. Peterson and DTM D. Miller. It appears that the scope of the inquiry into the manner of operating within that unit had broadened to include how time was submitted and approved and the use of IDs and passwords by others than the designated individual. By Notice dated June 6, 2013, Claimant was charged with being dishonest during the Corporate Audit interview on June 4, using his manager's computer access credentials to approve his own time off when on vacation in Florida in February, and logging into a training module as another employee to take a course on their behalf.

While the transcript of Claimant's June 4 interview was placed into the record during the June 18, 2013 Investigation, all of the documents that he was questioned about were not brought forward during the testimony of the Auditor, with the exception of a few records indicating that Claimant had logged into his computer and utilized the username and password of Peterson to approve time for various gangs within the unit (including his own time when he was in Florida in February), and had, on one occasion, logged onto the computer using the ID and password of one of the drivers and accessed the testing platform for a Hazmat test. At the beginning of Claimant's interview he explained that as the trained TEP person for the service unit, he had access and authority to approve payroll for any gang on the unit with his own ID and password, and admitted that Peterson had given him his ID and password and instructed him to approve time (including his own) when he was standing there. He did not recall doing so when Peterson was not there, but, after being shown computer IP records, was forced to admit that, after being instructed by Peterson and Miller to take care of the payroll for the gang when he was in Florida, he must have approved his own time using Peterson's access code while he was down there. During the interview Claimant admitted that Miller also gave him his access information to approve something in procurement when he was in

the field, and had used it to do so maybe a dozen times. He also identified other employees who had access to Miller's username and password information so they could see outstanding contractor bills in the CAM system.

Both during the interview and at the Investigation, Claimant explained that both Peterson and Miller directed him to perform tasks (including approving payroll and expenses) that they should have been doing, in order to get things done and have things run smoothly and in a timely fashion. Claimant stated that Miller told him to take care of the testing when it showed up that one of the drivers had outstanding testing requirements, and to "get it out of there" so he would access a driver's information on the testing platform to determine what was necessary. Claimant did not recall actually taking tests for drivers, with the exception of perhaps a Hazmat video on one occasion. The documentation presented showed that Claimant accessed the test as if he were the driver, but did not show that he took it for the driver, whose record indicates a different date for test completion. He noted that he probably should not have been doing these things, but that he feared being pulled out of service and charged with insubordination if he refused his superiors directives, so he complied. Claimant testified that they had him doing a lot of things that should have been reserved to management, but that they did not have time to do themselves. He stated that intimidation went on daily at that office, a fact confirmed by the Material Foreman who was also going to be subject to discipline for complying with Director Miller's instructions to take tests for him.

It appears that at the time of the Investigation, Miller and Peterson had been removed from service and were no longer in Carrier's employ. Claimant agreed that he did not push back at the time for fear of losing his job, but that it was something he probably should have put a stop to, since what was going on was wrong, but that he could not get another job without travel since his seniority was on that unit under DTM Miller. Claimant denied lying to the Auditors about approving his own time in Florida, stating that he did not recall doing so until he was actually shown the computer IP records

indicating that the approval was done from his computer while he was in Florida using Peterson's access information. He took issue with the limited information produced by the Auditor during his Investigation, stating that she omitted many of the emails and documents showing that he was directed to take the actions at issue by his supervisors. The Auditor opined that Claimant was responsible for his own actions even if he was following directives from his superiors, and that he did not need to comply if they were against company policy, but she was unable to say if it would constitute insubordination if Claimant had refused his manager's directives if safety was not involved. As a result of Claimant's responses during the June 4 Audit interview, and the evidence adduced at the June 18, 2013 Investigation, Claimant was issued a Level 5 dismissal for Dishonesty in violation of Rule 1.6 (4) on July 8, 2013.

Carrier argues that there is substantial evidence in the record to support the charge of dishonesty since Claimant lied during his June 4 Audit interview when he stated that he only approved time with Peterson's credentials when he was present and standing there, but was forced to admit that he had approved his own time using his manager's credentials while he was in Florida outside the presence of Peterson. It also notes that Claimant was dishonest in using his manager's credentials to approve his own time, as well as logging into a training module as another employee to take a test for him. Carrier asserts that the serious nature of the offenses support the penalty of dismissal, which has been upheld as appropriate for dishonesty, citing Public Law Board No. 5666, Award 73; Public Law Board No. 5719, Award 33; Special Board of Adjustment 924, Award 243. Finally, Carrier contends that Claimant was afforded all of his due process rights, and there were no procedural defects in this case.

The Organization contends that Carrier is subjecting Claimant to double jeopardy in this case, by dismissing him for approving his own time while in Florida in February, when that was the subject matter of a prior dismissal. The Organization argues that Claimant fell prey to the obvious culture in that office of overworked managers asking

their subordinates to do things for them that they should not have been delegating, including directing Claimant to approve time, and giving him access to their personal usernames and passwords to accomplish these tasks, since they trusted him to properly approve and submit the payroll for the service unit, including his own time. It notes that the Investigation only includes part of the Audit interview exhibits supporting the charges, but excludes the documents explaining that Claimant was directed to perform the disputed functions by managers, in accord with their expectations and the existence of intimidation with respect to the consequences of noncompliance. The Organization asserts that there is no proof of dishonesty on Claimant's part, since Carrier failed to establish that Claimant actually took a test for another employee, and his inability to recall having approved his own time months previous until being shown the pertinent documentation does not amount to intentionally lying. It points out that Claimant took pride in helping his managers make the North Platte Service Unit a well oiled machine, and the directives Claimant followed were for the benefit of Carrier and the convenience of his supervisors.

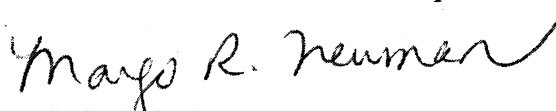
A careful review of the record convinces the Board that Carrier has met its burden of proving that Claimant engaged in dishonest conduct, and actions he understood were wrong at the time, when he utilized his superiors' personal computer access information to perform tasks that they should have been doing, and that he was not authorized to do on his own. There is no doubt that the record supports the Organization's claim that there was a culture in this office of managers improperly requesting/directing their subordinates to perform tasks they should not have been doing, and to do so in a manner that indicated that there was proper authority for such actions. Carrier obviously came to that conclusion as a result of the Audit interviews, and took action to dismiss the managers involved. We are unable to conclude that Claimant intentionally lied in his interview with the Auditors on June 4, when he failed to recall that he approved his own time outside of Peterson's presence when he was in Florida prior to being shown the documents supporting that fact. The entirety of his interview shows that he was

attempting to be cooperative, and had good recollection when shown the applicable documentation, but could not recall specific instances of conduct from months prior when asked general questions.

However, we agree with Carrier that Claimant must be held accountable for his improper actions, and that it is an insufficient excuse that he was just following the orders of his supervisors so as to avoid losing his job. He understood that what he was doing was wrong, and there can be no question that he engaged in serious misconduct. That being said, the Board is of the opinion that the context within which these actions took place must be considered to be a mitigating factor, and that dismissal of a 15 year employee, whose work ethic and commitment was lauded by both managers and fellow employees, is excessive under the circumstances. We conclude that the dismissal should be modified to a long term suspension, and that Claimant should be returned to work without loss of seniority or benefits, but without back pay.

AWARD:

The claim is sustained, in part.



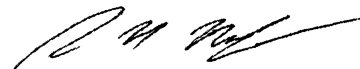
Margo R. Newman
Neutral Chairperson

Dated: 1/15/2016



K. N. Novak
Carrier Member

Dated: 1/15/2016



Andrew Mulford
Employee Member

Dated: 1/15/2016