

PUBLIC LAW BOARD 7660

PARTIES) UNION PACIFIC RAILROAD COMPANY
)
TO) VS.
)
DISPUTE) BROTHERHOOD OF MAINTENANCE
) OF WAYEMPLOYES DIVISION –
) IBT RAIL CONFERENCE

Public Law Board 7660 consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. D. Bruckner, by letter dated November 9, 2020, in connection with allegations that he failed to comply with Rule 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instructions; SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct); The How Matters Policy; and 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.’ (Employees’ Exhibit ‘A-1’) was excessive, arbitrary, disparate; imposed without due process; without the Carrier having met its burden of proof; and in violation of the Agreement (System File A-2048U-010/1748509 UPS).

2. As a consequence of the violation referred to in Part 1 above, Claimant D. Bruckner shall be reinstated to service and be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination, any and all expenses incurred or lost as a result, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of Railroad Retirement month credit and any other loss.”

FINDINGS:

The Board, upon the whole record and all the evidence, finds that The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Claimant was employed as a System Material Foreman CDL assigned to Gang 9561 at the time of the incident. The Claimant started and ended his work days on October 27 and 29, 2020, at his home city of Cheyenne, Wyoming, not at his work site reporting location of Laramie, Wyoming. The Claimant's work site reporting location was not more than fifty (50) miles from his residence.

The Carrier issued a Notice of Investigation letter dated November 10, 2020, which stated as follows: "...to develop the facts and determine your responsibility, if any, in connection with the below charge. On November 3, 2020, the Carrier gained knowledge that on the dates of October 27th and 29th, while employed as a System Material Foreman, CDL, you allegedly were dishonest when you falsely claimed per diem. This allowed you to receive per diem that you were not entitled to. This is a possible violation of the following rule, rules and/or policy..."

After one postponement, the investigation hearing was held on December 2, 2020. By letter dated December 16, 2020, the Claimant received a discipline notice which found a violation of Rule 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instruction, SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct) The How Matters Policy, and 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. The cited rules are incorporated herein as if fully rewritten. The Carrier dismissed the Claimant.

By letter dated December 30, 2020, the Organization filed a claim, and the Carrier denied the same on February 22, 2021. The Organization advanced the appeal by letter dated March 9, 2021, and the Carrier denied the same by letter dated May 5, 2021. A formal conference was held with no resolution of the claim on June 2, 2021. By letter dated June 3, 2021, the Organization requested the Carrier to re-evaluate its position. By letter dated October 4, 2021, the Carrier's position remained the same. The parties could not resolve this claim, and this matter is before this Board for a final resolution.

Sections 2 and 3 of the Agreement signed on March 6, 2012, commonly referred to as the BMWED Local/National Agreement, provide the per diem policy, which states in pertinent part:

"2. Per diem allowances provided to employees headquartered on-line or in other mobile service will only be paid on days when compensated service is performed and days scheduled but not worked at the direction of management (e.g., Hours of Service required rest for CDL drivers, inclement weather).

3 No per diem allowance will be paid to an employee headquartered on-line or in other mobile service who is working (work site reporting) within fifty (50) miles of their residence."

The Board has reviewed the record developed by the parties during their handling of the claim on the property and considered evidence related to the following to make its determination of this claim:

- 1) Did the Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?
- 2) If so, did the Carrier establish by substantial evidence the Claimant was culpable of the charged misconduct or dereliction of duty?
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?

While acknowledging the challenging nature of the transcript, the Board has determined no significant harm or prejudice to the Claimant in the proceedings. Based on the evidence presented, the Board has concluded the Claimant was not eligible for per diem. Thus, the Claimant failed to adhere to Rule 1.13, which pertains to Reporting and Complying with Instruction. However, there is insufficient proof to establish the Claimant willfully and knowingly submitted the compensation requests violating Rule 1.6.

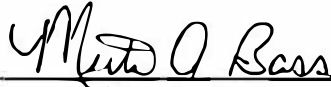
In assessing the penalty imposed, the Board deems it excessive given the circumstances of this case. The evidence suggests the Carrier could have addressed the Claimant's knowledge, understanding, and application of the per diem rule through formal coaching, yet the Carrier opted for an automated approval of the per diem despite being aware of the error. Considering the totality of the infractions, the application of policy, and the Claimant's overall record, the appropriate penalty is to categorize this violation as a MAPS Training-1 event with a retention period of twelve months from the date of the award. No back pay is awarded.

AWARD

Claim sustained consistent with these findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass

Neutral Chairperson

Dated: Sept. 28, 2023



Chris Bogensief

Carrier Member

Dated: September 29, 2023



John Schlismann

Organization Member

Dated: September 28, 2023