

PUBLIC LAW BOARD NO. 7660  
CASE NO. 24

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY  
[Former Southern Pacific Transportation Company (Western Lines)]

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Claimant G. Nahe by letter dated December 4, 2013, for alleged violation of GCOR Rule 1.6, Conduct (4) Dishonest and GCOR Rule 1.13 Reporting and Complying with Instructions was arbitrary, unwarranted and in violation of the Agreement (System File T-1445S-701/1599209 SPW).

2. As a consequence of the violation referred to in Part 1 above, Claimant G. Nahe shall be made whole by compensating him for all wage and benefit loss suffered as a consequence of his Level 5 termination and the alleged charge(s) expunged from his personal record.”

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.

Claimant, a B & B Foreman with 6 years of service, was issued a Notice of Investigation dated November 4, 2013 on charges that he was dishonest when he used the company credit card for personal items (including tobacco) and altered receipts, and failed to comply with the Visa Purchasing Cards online manual, as discovered in an interview with Corporate Audit on October 31, 2013. The December 4, 2013 Notice of Discipline finds Claimant guilty of the charges in violation of Rule 1.6 Conduct (4) Dishonest and Rule 1.13, Reporting and Complying with Instructions, and assesses him a Level 5 dismissal. The instant appeal resulted.

Claimant was informed that he would be interviewed by Corporate Audit via telephone conference on October 31, 2013. He was called into the office with his Manager and supervisor, and was questioned by three different individuals from Corporate Audit over the phone, being shown various documents forwarded for use prior to the interview. He was told that the interview would be recorded, and a transcription was entered into evidence during the Investigation. He did not ask for Union representation. Claimant's explanation at the interview, and again during the Investigation, was that in each of the numerous instances of receipts and logs shown to him where he made personal purchases and submitted them as something else work-related, he was mistaken and intended to use his personal card for some of the items listed, but must have used the wrong card. Claimant repeated that his actions were unintentional, and, at the close for the Investigation, he asserted that he had done nothing wrong. He testified that there have been occasions when he has mistakenly used his personal credit card for a work-related purchase, giving one example of cable equipment. Claimant stated that after these discrepancies were first brought to his attention on October 31, he attempted to send a reimbursement check of \$25.00 to his Director. Claimant was pulled out of service on October 31, 2013 pending the results of the Investigation.

The Carrier argues that the Claimant was afforded a fair and impartial hearing, noting that the October 31, 2013 Corporate Audit interview was not an Investigation within the confines of Rule 45, requiring notice to, and participation by, the Organization, citing Public Law Board 7633, Award No. 45. It notes that an offer to call those involved with the Corporate Audit as witnesses was made if desired by the Organization, and such offer was not pursued. The Carrier contends that it presented more than substantial evidence that Claimant engaged in the dishonest conduct with which he was charged, and that Claimant's affirmative actions in altering documents and mischaracterizing expenses on his logs submitted for approval undermines his claim to have made a mistake and acted unintentionally. Finally, the Carrier asserts that the seriousness of the conduct supports the penalty of dismissal, even without considering Claimant's past disciplinary record, relying on Public Law Board 5666, Award No. 73; Public Law Board 6006, Award No. 77.

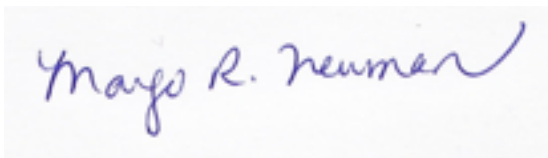
The Organization initially contends that the hearing conducted by the Carrier on October 31, 2013 was outside the confines of Rule 45, was improper, and denied Claimant his contractual right to Union representation and due process. It also maintains that the Carrier failed to call relevant witnesses at the Investigation, relying solely on a transcript of the Corporate Audit interview. The Organization argues that the Carrier failed to meet its burden of proving that Claimant violated the cited Rules or was dishonest, since Claimant did not lie, cheat or deceive but merely mistakenly mixed up his similar-looking corporate credit card for his personal credit card on certain occasions, and vice versa. It asserts that Claimant did not fail to follow any instructions of supervisors concerning his monthly documentation submission, since none were given and his logs were approved. Finally, the Organization posits that the discipline imposed was excessively harsh, arbitrary and unwarranted.

Initially we note that there were no procedural errors in this case, and Claimant was afforded all of the contractual safeguards to which he was entitled. A Corporate Audit interview is not an Investigation falling under Rule 45. See, e.g. Public Law Board 7633, Award No. 45. On the basis of the entire record, the Board concludes that the Carrier met its burden of proving, by substantial evidence, that Claimant engaged in the dishonest conduct with which he was charged, and that his actions were not merely a mistake or unintentional oversight, but were a calculated course of conduct designed to obfuscate the true nature of his personal charges in an attempt to have them approved for payment by the Carrier. It is clear that Claimant folded receipts so that the nature of the charges or amount could not be seen, hand wrote amounts, and utilized receipts to support log entries to which they did not apply, labeling the items as various work-related expenses.

The Visa Card Purchasing manual clearly states that tobacco products are unallowable expenses, yet Claimant repeatedly submitted his cigarette purchases on his corporate credit card. It also states that the card is to be used for business-related purposes only and that appropriate receipts are to be maintained (not folded or altered) and submitted with the transactions logs. Claimant repeatedly folded or altered his receipts when submitting them by fax with his logs, making it difficult to pick up the discrepancies. We have no hesitation in finding that Claimant was dishonest and failed to comply with the Visa Card Purchasing manual in violation of Rules 1.6(4) and 1.13, and that the issuance of a Level 5 dismissal was appropriate for such egregious conduct. See, e.g. Special Board of Adjustment No. 924, Award 243.

AWARD:

The claim is denied.



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Margo R. Newman  
Neutral Chairperson

Dated: August 2, 2016



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K. N. Novak  
Carrier Member



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Andrew Mulford  
Employee Member