

## **PUBLIC LAW BOARD NO. 6552**

|                                     |                    |
|-------------------------------------|--------------------|
| <b>BROTHERHOOD OF MAINTENANCE )</b> |                    |
| <b>OF WAY EMPLOYES )</b>            |                    |
| <b>And )</b>                        | <b>AWARD NO. 2</b> |
| <b>)</b>                            | <b>CASE NO. 2</b>  |
| <b>)</b>                            |                    |
| <b>SOO LINE RAILROAD COMPANY )</b>  |                    |

### **STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The dismissal of Grinder Operator M. A. Wahl for her alleged falsification of motel lodging and camper receipts and the associated meal expense claimed on your expense account for the months of May 1996 through February 1997, April through September 1997 and March of 1998 was without just and sufficient cause, based on unproven charges, arbitrary and capricious (System File D1490-9.98/8-00351).**
- (2) Grinder Operator M. A. Wahl shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and have her record cleared of this incident.”**

### **FINDINGS:**

**Public Law Board No. 6552, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.**

**Claimant began her employment with the Carrier in May 1996. Over the next two years, she worked in both headquartered service and non-headquartered service. Claimant regularly submitted her expense accounts for lodging and meals when, as a headquartered employee, she was held away and unable to return to headquarters overnight, and when she was assigned as a non-headquartered employee and was required to be away from home throughout the work week.**

**In 1998, Carrier undertook an investigation on the subject of fraudulent expense accounts. Detailed audits were conducted of expenses claimed by employees. Carrier police investigators interviewed various employees, including the Claimant, about the nature and extent of the situation.**

Claimant was interviewed on April 15, 1998 by CP police investigator B. Toler. During the interview, she admitted that she obtained phony motel receipts which were submitted to the Carrier for reimbursement. She also acknowledged that she submitted camper receipts, even though she did not own a camper. Claimant stated that she submitted the lodging and camper receipts so she would be entitled to meal reimbursements as a headquartered employee or the meal allowance as a non-headquartered employee.

On May 8, 1998, Claimant was advised that effective immediately she was removed from service pending formal investigation for the alleged falsification of motel lodging and camper receipts and the associated meal expense claimed on her expense accounts for the months of May 1996 through February 1997; April through September 1997, and March of 1998.

At the investigative hearing on May 26, 1998, Investigator Toler testified that, in some instances, false receipts were provided to the Claimant by motel employees at her request. In other instances, receipts were falsified by altering the dates for the lodging. Statements from motel employees corroborated these irregularities. In still other instances, Claimant submitted camper expenses listing her sister's license number. All told, Claimant submitted fraudulent claims in excess of \$3,400.00.

Claimant's testimony is consistent with her original statement to Investigator Toler. By way of explanation, however, Claimant testified that during her first year of employment, her foreman prepared and submitted her expense reports. Although acknowledging that she signed the expense accounts verifying their accuracy, she testified: "I was just doing what everybody else did, and I didn't think of it as being wrong." Claimant apologized for any "unintentional improprieties" and stated that she had been misinformed and misled about Carrier policy.

Following the hearing, Claimant was dismissed from service. The Organization filed the instant claim, contending that there were numerous grounds for reversing the dismissal. Each will be addressed in turn.

First, the Organization contended that there were procedural and due process defects in the handling of the case. In particular, it argued that 1) no specific charges were listed in the initial notice of investigation; 2) a requested postponement by the Organization was not granted; and 3) Claimant was subject to entrapment when she was interviewed by Carrier police investigators and deprived of the right to union representation.

The Board finds that the notice of charges was sufficient to advise the Organization and the Claimant of the misconduct alleged and it was detailed enough to prepare a defense. Moreover, we do not believe that the hearing officer abused his discretion when he permitted the Organization additional time on the day of hearing to review certain documents rather than postponing the hearing for a

later time. No prejudice to the Organization or the Claimant was demonstrated; on the contrary, a thorough defense was presented.

By the same token, we do not agree with the Organization when it argues that Claimant was subject to entrapment. The term "entrapment" is used in the criminal law. It is a defense to criminal liability for crimes induced by governmental persuasion or trickery. Even if the term was imported from the courtroom to the hearing room, the Board would necessarily conclude that there was no chicanery by the Carrier in conducting an interview with the Claimant. In this case, the Carrier sought information regarding Claimant's expense accounts and Claimant provided that information. This did not amount to "entrapment" as that term is understood nor was the information from the Claimant "illegally" obtained.

Nevertheless, the Board is cognizant of the Organization's underlying concerns when an employee is interviewed by a Carrier investigator. There must always be a careful examination of all the surrounding circumstances to determine whether statements, including admissions, should be given credence. A statement given under duress, coercion or misrepresentation, for example, would not be accorded probative value because of the likelihood that it is an unreliable expression of the truth.

In the matter at hand, however, we find unpersuasive the Organization's contention that "investigators continuously misrepresented the agreement, indicating to [Claimant] and others that they had no right to have representation during their discussions..." The Board has carefully reviewed the transcript of the interview and we find no such statement made to the Claimant. Equally important, the Claimant indicated during the interview and again at the investigation that she gave a statement of her own free will.

The Board further notes that this is not a case in which the Carrier seeks to meet its evidentiary burden solely through the introduction of Claimant's statement to Carrier police investigators. There is extensive corroborative evidence, including the Claimant's own testimony at the hearing, and the documents and records produced as a result of the audit, which provide more than a sufficient basis for concluding that Carrier met the test of substantial evidence.

Concluding as we do that the Organization's due process arguments are without merit, and that the Carrier has proven the charges directed against the Claimant, we next turn our attention to the remaining defenses asserted by the Organization. In the Organization's view, the Claimant should not be subject to discipline because supervisors either filled out her expense accounts for her or approved the expense accounts she submitted without question. Moreover, the Organization maintains that there was confusion as to how many miles away from headquarters location a crew must be in order to claim expense reimbursement.

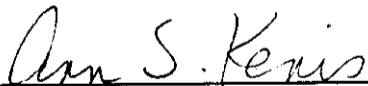
While these may be explanations, they are not excuses for Claimant's actions. Claimant admitted in her testimony that she knowingly submitted lodging expenses for nights she did not stay and camper receipts identifying a camper she did not own and did not use. There was no "confusion" on that fundamental point. Moreover, Claimant may not exculpate herself by pleading the negligence or wrongdoing of others. Each time Claimant affixed her signature to her expense form, she indicated that she was submitting a true account of expenses incurred in connection with her employment. She had an obligation to provide an honest accounting to the Carrier of expenses she actually incurred. She failed to do so, not just once, but routinely over a period of years.

The fraudulent receipts submitted by the Claimant are inimical to the trust required in the employee-employer relationship. Having breached that trust, we cannot say that Carrier abused its discretion or acted unreasonably or arbitrarily when it concluded that dismissal was an appropriate penalty.

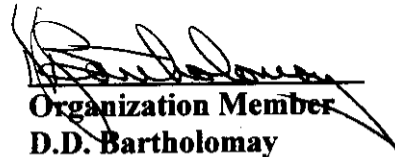
Additional arguments raised by the Organization have been addressed in Awards 3 and 4 of this Board. The Board's findings in those cases are incorporated herein. Concluding as we do that this claim must be denied on the grounds cited above, the Carrier's remaining contentions need not, and therefore will not, be addressed.

**AWARD**

**Claim denied.**

  
ANN S. KENIS, Neutral Member

  
Carrier Member  
M.R. Kluska

  
Organization Member  
D.D. Bartholomay

**Dated November 1, 2002.**