

PUBLIC LAW BOARD NO. 6552

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYES)	
and)	AWARD NO. 3
)	CASE NO. 3
)	
SOO LINE RAILROAD COMPANY)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of B & B Truck Driver Daniel G. Thorpe for his alleged falsification of motel lodging and camper receipts and the associated meal expense claimed on his expense accounts during 1995, 1996 and 1997 was without just and sufficient cause, arbitrary and capricious (System File D1488-10.09/9-00354).**
- (2) B & B Truck Driver Daniel G. Thorpe shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and have his 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 Employes 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.

On May 8, 1998, Claimant was removed from service pending formal investigation for allegedly falsifying motel lodging and camper receipts and the associated meal expense on his expense accounts for the months of July through December 1995, April through June 1996, August through October 1996, November through December 1996, April through July 1997, and August through November 1997.

On May 29, 1998, a formal hearing was held. Claimant admitted in his testimony that he submitted fraudulent camper and motel lodging receipts over a period of several years. He claimed that when he was first entered Carrier’s service in 1995, a supervisor helped him fill out the expense forms and did not correct the erroneous camper charge listed on Claimant’s expense account. As a result, Claimant believed that he was acting appropriately when he subsequently claimed camper expenses, even though they had not actually been incurred.

The phony motel receipts, on the other hand, were "just a total mistake on my part," Claimant conceded. Claimant accepted responsibility for those receipts, but nevertheless maintained that he did not intentionally defraud the Carrier. He apologized, offered to make restitution, and promised to become a trustworthy employee if given another chance to regain his employment.

The Organization raised several threshold arguments which have been addressed in Case Nos. 2 and 4 before this Board. We incorporate our findings therein in the instant case.

The Organization further argues that dismissal under the circumstances was excessive and arbitrary punishment. After careful review of the record in its entirety, the Board respectfully disagrees. Claimant turned in fraudulent monthly expense forms over a period of three years. Each time, he affixed his signature to the form, certifying and attesting that he was submitting a true statement of expenses incurred by him while conducting Carrier business. The repeated and routine nature of the falsification belies any claim of inadvertent error or good faith mistake. Notwithstanding the Claimant's assertions to the contrary, the element of intent is clearly present on this record.

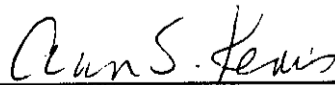
Claimant benefited from the expense account fraud by a sum in excess of \$3,000. 00. He was responsible for submitting his expense accounts. All employees should know that they are entitled to reimbursement only for expenses actually incurred. The fact that the falsification went undetected for a long period of time does not mean that it was sanctioned by the Carrier nor does it mean that Carrier waived the right to impose discipline once the misconduct was discovered after an extensive audit. Claimant's attempt to shift the blame in that regard is unpersuasive.

Claimant is to be commended for his recognition of wrongdoing. However, it is not the province of the Board to grant leniency. Although the Claimant feels remorse for his actions and has offered to make restitution, the Carrier considered those factors and ultimately concluded that they did not outweigh the seriousness of the offense he committed. We cannot say that the Carrier's determination was arbitrary, unreasonable or capricious.

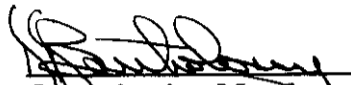
The submission of fraudulent expense accounts justifies dismissal because it is dishonest and amounts to theft. There is a serious breach of trust once this occurs and the Carrier is fully justified in severing the employment relationship. Moreover, unlike the cases cited by the Organization in which mitigating circumstances were present, we find no basis for mitigation on this record. The claim must be denied.

AWARD

Claim denied.


ANN S. KENIS, Neutral Member


Carrier Member


Organization Member

Dated November 1, 2002.