

PUBLIC LAW BOARD NO. 6552

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES)
)
And) AWARD NO. 4
) CASE NO. 4
)
)
SOO LINE RAILROAD COMPANY)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Grinder Eugene V. Weyer for his alleged falsification of motel lodging and associated meal expenses claimed on your expense account during 1995, 1997 and 1998 was without just and sufficient cause, arbitrary and capricious (System File D1662-8.98/8-00353).**
- (2) Grinder Eugene V. Weyer shall now be reinstated to service with seniority and all other rights unimpaired, his record cleared of all the charges and compensated for all wage loss suffered.”**

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 alleged falsification of motel lodging and associated meal expenses claimed on his expense account for the months of January through December 1995; February through September 1997; and November 1997 through February 1998. After a hearing conducted on June 9, 1998, Claimant was dismissed from service.

Testimony adduced at the hearing shows that Claimant is a long-term employee, with seniority dating from September 8, 1969. In 1998, Carrier began an investigation to determine whether employees were submitting improper expense reports. When Claimant became aware of the investigation, he contacted his supervisor and reported that he had been submitting expense reports that might be incorrect. Claimant subsequently gave a statement to Carrier police investigators admitting that he falsified motel receipts in order to be eligible for meal expense

reimbursement. At the hearing, Claimant again acknowledged that he had submitted phony motel receipts and offered to make restitution for any monetary losses incurred by the Carrier.

After careful review, it is clear from the record that there is substantial evidence, including Claimant's own admissions, to support the charges herein. Accordingly, we must turn our attention to the Organization's defenses and whether there are any procedural irregularities or mitigating circumstances sufficient to vitiate the dismissal.

The Organization first contends that the Carrier violated Agreement Rule 20, which provides in pertinent part as follows:

(b) The hearing will be held within twenty (20) days of the date of the occurrence or within twenty (20) days from the date information is obtained by the appropriate officer of the Company (excluding company security forces). . . .

It is the Organization's position that a Carrier officer informed the investigative department of the possibility that misconduct had occurred in the instant case. According to the Organization, the Carrier officer thus possessed sufficient "information" so as to trigger the twenty day timeline under Rule 20.

We disagree.

The rule calls for the twenty-day time limitation to begin either from the date of the occurrence or the date "information" is obtained by the appropriate Carrier officer. We are concerned with the latter. As the party asserting untimeliness as an affirmative defense, the Organization had the burden of establishing that a Carrier officer had "information" that would trigger the contractual timeline. It did not meet that evidentiary burden.

On the contrary, the record indicates that Carrier police were conducting their investigation into expense account misconduct when Claimant informed his supervisor that he may have been involved. The Carrier police then conducted an extensive investigation of Claimant's expense accounts dating back over several years. Once that investigation was completed, and the report was turned over to the appropriate Carrier officer, a determination was made that Claimant should be charged and directed to report for hearing.

Under these particular circumstances, where the Claimant was under a continuing investigation as a possible participant in an expense account scheme, we find that Carrier did not waive its right to discipline the Claimant. The Carrier properly waited until the police investigation was completed before acting. Had it acted earlier, the Organization could have legitimately claimed that Carrier jumped the gun without sufficient evidence. As the record stands, we find that the Carrier

had "information" about the alleged misconduct when it obtained the police investigator's report. The Organization's claim of untimeliness must therefore be rejected.

The Organization next argues that the mileage requirement -- which dictates how far away from headquarters a location crew must be before allowing expense reimbursement -- was arbitrarily applied in the Claimant's case. In the Organization's view, the rules were not made known to employees. Claimant routinely submitted expense forms for lodging which were approved by the Carrier, the Organization points out. He was never told he should have returned to headquarters because he was working within an established radius of his headquartered position. According to the Organization, Carrier cannot demand compliance with a requirement that has not been communicated nor can employees be disciplined for violating a policy they do not know exists.

Certainly, the Board concurs with the basic proposition that an employee must have knowledge of the rules he or she is charged with violating. If the mileage requirement were the sole issue before the Board, we would agree that Claimant should not be penalized for staying away from headquarters when the Carrier over a period of time had condoned such actions.

There is an equally important principle that controls the outcome of this case, however. Carrier is not required to establish that it communicated specific rules for certain well-recognized proven offenses. Fraud and theft fall into that category. Common sense dictates that such misconduct is so clearly harmful to the employee-employer relationship that any employee would recognize that it is prohibited. When the Claimant turned in phony motel receipts, he committed a most serious transgression. Regardless of whether or not Claimant had a reasonable basis for remaining away from headquarters, there can be no reasonable basis for falsifying motel receipts.

The Organization also asserts that there are mitigating circumstances present which should be taken into consideration. The Board recognizes that Claimant was cooperative during the investigation and that he offered to make financial restitution to the Carrier. It must be remembered, however, that Claimant did not come forward until the investigation produced evidence against him. His belated recognition of wrongdoing, while perhaps offered with the utmost sincerity, simply does not outweigh the seriousness of the proven misconduct. By the same token, the Claimant's long service record is not a sufficiently countervailing circumstance to justify the conclusion that Carrier abused its discretion when it determined that dismissal was the proper penalty.

Additional arguments raised by the Organization have already been thoroughly addressed in Awards 2 and 3 of this Board. The Board's findings in those cases are incorporated herein.

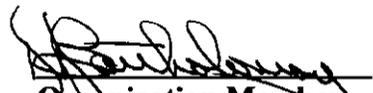
Because this claim must be denied on the merits, the Board need not address the Carrier's remaining arguments.

AWARD

Claim denied.


ANN S. KENIS, Neutral Member


**Carrier Member
M.R. Kluska**


**Organization Member
D.D. Bartholomay**

Dated November 1, 2002.