

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7258

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
)	Case No. 26
and)	
)	Award No. 26
UNION PACIFIC RAILROAD COMPANY)	
)	

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 1, 2009

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The five (5) day suspension imposed upon Mr. Robert D. Abel for violation of GCOR Rule 1.13 in connection with failure to comply with instructions to re-submit a corrected expense report is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File 1506014 SPW)).
2. As a consequence of Part 1 above, we request that the discipline imposed upon Mr. Abel be expunged from his personal record and that he be reimbursed for any and all wages and benefits lost as a result of having to serve out a Level 3, five (5) day suspension."

FINDINGS:

Public Law Board No. 7258 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimant, during the time that this dispute arose, was employed as a Bridge and Building Welder with seniority to August 26, 1996. Claimant was ordered to report for an investigation on March 19, 2008 concerning Carrier's allegations that he failed to comply with instructions given by a Carrier Manager. The investigation was held as scheduled and on April 21, 2008 the Claimant was informed that a substantial degree of evidence supported sustaining the charges lodged. Claimant was assessed a Level 3 discipline. The Organization submitted a claim in regard to Carrier's finding dated June 10, 2008 that was denied August 4, 2008. Appeal was made on September 26, 2008 and denied by the Carrier on November 21, 2008. A conference was held in regard to the dispute without reaching resolution.

The record reveals that Claimant submitted mileage charges for a February, 2007 work-related trip to Reno, Nevada. Claimant was charged with violation of GCOR Rules 1.6 (4) and 1.13 and an investigation was held on February 15, 2008 in connection with that submission. Claimant was exonerated of those charges by letter dated February 25, 2008 but warned: "In the future, you are instructed to submit all personal expenses correctly and in a timely manner." and that he should contact his manager and return to work.

Claimant's manager testified that he tried to contact Claimant on Sunday, February 25, 2008 to inform him to return to work, but was unable to reach him. The next morning, the manager testified, he was in Las Vegas, but contacted another manager and asked him to go by Claimant's home and tell him to return to work and to resubmit a corrected expense report for the expenses that were the subject of the prior investigation.

That manager testified that he and another manager went to claimant's home at 10:20 a.m. on Monday, February 26, 2008 and instructed Claimant to return to work the next day and to take care of his expense account as soon as he returned. It is undisputed that Claimant did return to work as instructed and also undisputed that Claimant did not resubmit a corrected expense account as instructed.

The Organization first claims that the manager's instruction to claimant to "take care of his expense account" was vague and ambiguous and did not amount to a direct order. Even if the instructions to Claimant can be construed as a direct order, the Organization contends, there is no rule or mandatory requirement for any employee to file or submit expense reimbursement forms and employees are not duty-bound to make any such submission. Hence, the Organization argues, the Carrier has failed to prove the charges leveled against Claimant.

The Carrier's argument is that expense accounts have an impact on the Carrier's operating budget and that its order to Claimant was reasonable and appropriate in order for Carrier to properly manage its operating budget. Thus, Carrier opines, there can be no question that Claimant's actions are a clear violation of Rule 1.13. The Carrier contends that the only issue before this Board is whether or not the Claimant complied with his instructions.

Rule 1.13 states: "Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties." What comes into question in this matter is the phrase "...when the instructions apply to their duties."

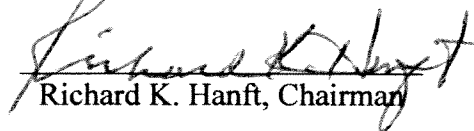
The manager who gave Claimant the instruction to take care of his expenses also testified that there is no rule requiring an employee to seek reimbursement for personal expenses. If the Claimant was not required as part of his duties to seek reimbursement for his expenses then the instructions given him did not apply to his duties. Carrier has failed to prove that Claimant's failure to re-submit something that he had no duty to submit in the first place was in violation of the rule.

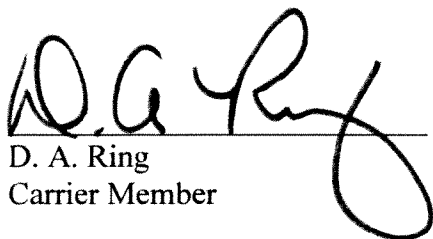
AWARD

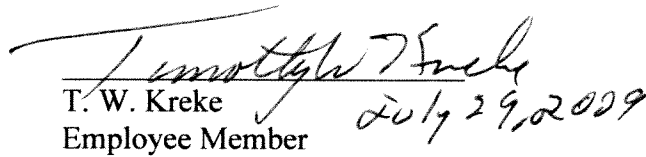
Claim sustained.

ORDER

The Board, having determined that an award favorable to the Claimant be made, hereby orders the Carrier to make the Award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Richard K. Hanft, Chairman


D. A. Ring
Carrier Member


T. W. Kreke
Employee Member

July 29, 2009

Dated at Chicago, Illinois, June 16, 2009