Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way Employees' Division/IBT	)	
	)	
vs	)	**Case 103/Award 104**
	)	
Burlington Northern Santa Fe Railway Company	)	

Statement of Claim

Appeal of the ten (10) day suspension by the Carrier of the Claimant to this case who is machine operator Lynn R. Holt.

Background

An investigation was held on January 16, 2007 to determine facts and place responsibility, if any, in connection with charges levied against the Claimant in this case whose name is Lynn R. Holt. According to the charges, the Claimant engaged in alleged misconduct when he inappropriately claimed lodging and mileage expenses from December 4-8, 2006 while he was assigned as a machine operator with headquarters in Alliance, Nebraska.

After an investigation was held the Claimant was advised that he had been found guilty as charged and he was assessed a ten (10) day record suspension.

The discipline was appealed by the Claimant in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the Organization that created Special Board of Adjustment (SBA) 1112 under the authority of

the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been given final and binding powers to issue an Award in this case which is based on the criteria outlined by the parties in Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

Discussion

There was testimony at the investigation by the assistant road master for the Carrier's Powder River Division which is headquartered in Alliance, Nebraska. This individual was in charge of maintenance gangs' undercutting crews on the dates in question in this case. The Claimant was under the supervision of this witness during this time. One of the jobs of the undercutting crews involved the use of an excavator fitted with a tamping head to tamp ties. The normal operator of this piece of equipment was on vacation. The piece of equipment is an off-track tamper and it is admittedly somewhat complex to operate. The Claimant was asked and then assigned to work this position for the incumbent who was on vacation because he knew how to operate the tamper. The Claimant was assigned under Rule 19-B as vacation relief. The genesis of this case centers on mileage and hotel expenses that the Claimant claimed while working the excavator tamper on vacation relief on the dates of December 4-8, 2006.

The record shows that the Claimant filed for mileage for his personal vehicle from Alliance to Bridgeport, Nebraska which is about 40 miles distance one way. According to

the assistant road master the Claimant was not entitled to these reimbursements because he was working out of his headquarters point which was Alliance, Nebraska. The Claimant also got a motel room through the Carrier's contractor which is IML. Documents of record show that the Claimant stayed at a motel on the dates of 12/4/2006 through 12/7/2006. According to the assistant road master the Claimant was not entitled to this stay at the motel in question.

Testimony by the Claimant is that he did not understand the rules at the time he worked the relief position and he admitted at the investigation that he knew now that what he had done was wrong. According to him he filed for expenses because he had been informed by some "old heads" on how to fill out expenses.

Findings

There is no dispute that the Claimant was asked to fill the position under Rule 19-B. There is also no dispute that during the four days in question that the Claimant was working from his headquarters' point which was Alliance, Nebraska. Employees working their headquarters' point are not eligible for expenses.

A close scrutiny of the Claimant's testimony shows the following. The Claimant states that he knew, by the time of the investigation, that what he did was improper. But he implies quite a number of times that he did not know that what he did was wrong when he did it. As he states: "…I didn't mean to make mistakes (and) I'm not going to deny that I did these things, but I thought I was doing the right think at the time…" His claim is

that "old heads" had told him to do what he did. But he fails, upon closer questioning, to identify who such longer tenured fellow employees might have been. He admits that his previous assignment was working an Ohio crane on a B&B gang on new construction in the Gering – Scottsbluff, Nebraska area. It was a non headquartered position. He admits that position was headquartered "out of here" (meaning Alliance, Nebraska) which is why he was on expenses. It was also established that on December 8, 2006 the Claimant filed for car expenses for 80 miles when, in fact, he only had driven 40. When asked why he did this he states that he could "…not give an answer there…" because he had not even remembered that he had done that. He testified that he didn't know what he "…was thinking…" when he did that.

Argument by the union representative at the investigation is that what happened was a "…mix-up…" because new hires are "…running around…" somewhat confused about the provisions of the agreement which are very "…complex…"

Upon review of the full record in this case the Board concludes as follows.

First of all the Board is not convinced that there was the level of conceptual complexity present to which the union representative refers. In fact, the issue in this case is quite simple: when an employee works a headquartered position he is not allowed expenses. This is not a complex concept to grasp. The Claimant to this case had worked for the Carrier for less than a year but that in and of itself does not excuse him from knowledge of the provisions of the labor agreement and from knowledge of company

policy. Just prior to working the relief headquartered position the Claimant had worked a non-headquartered assignment and had received reimbursement for certain expenses. There is nothing in the record to show that he did not know that the relief position was different from the one he worked previously and that it was a headquartered one. There is also nothing in the record to show that the Claimant was not aware of the fact that he overcharged for mileage on December 8, 2006.

The narrow issue before the Board in this case is straightforward: an employee sought reimbursement for which he was not eligible. In the majority case this employee states he did what he did out of ignorance but then he states that some more seasoned employees advised him that it was proper to seek reimbursement for holding a headquartered position without being able to identify who any of those employees might be. With respect to a separate detail the Claimant to this case clearly attempted to obtain reimbursement for mileage for which he would not have been eligible under any circumstance.

The main thrust of the argument by the Claimant in defending himself is that he acted out of ignorance and/or he did not know why he did what he did. Obviously when it is a question of purloining an employer's assets such argument cannot serve as grounds for this Board to sustain a claim such as the instant one. Nor can the Board be party to precedent that would be set by such a ruling.

Whether this case would have been eligible for alternative handling, as the union

argues at the investigation, is not for this Board to say. That is not the issue upon which it is asked to rule.

In view of the full record before it the Board has insufficient grounds for concluding that the Carrier's determination in this case was not proper.

Award

The claim is denied.

Edward L. Suntrup, Chair &
Neutral Member

Date: 6/20/07