

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 236

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissed from all services with Norfolk Southern Railway) of Mr. D. Godwin, Sr., issued by letter dated February 13, 2012 in connection with his alleged conduct unbecoming an employee in that from at least June 24, 2011 until the bringing of these charges, he knowingly falsified his payroll by claiming the weekly travel allowance for his rest day round trip travel between work and an address in Walland, Tennessee, when in fact he was living at an address in Salisbury, Maryland which would not have entitled him to the travel allowance that he claimed using the Tennessee address was arbitrary, capricious, unjust, unwarranted, unreasonable and in violation of the Agreement (Carrier's File MW-HARR-12-03- SG-007).
2. As a consequence of the violation referred to in Part 1 above, Mr. Godwin, Sr. shall receive the remedy prescribed under Rule 40(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The Claimant entered service on January 2, 2003 as a Laborer. Between June 24, 2011 and January 10, 2012 the Claimant was working as a Spike Puller Machine Operator on Timber and Surfacing Gang 33. Timber and Surfacing 33 is a traveling gang which performs large scale track maintenance and replacement across a large geographic region. Employees on traveling gangs are often required to travel extensive distances to

their work sites. Employees on traveling gangs are thus provided lodging by the Carrier in motels or camp cars during the work week, which usually runs Monday through Friday. During rest days (usually Saturday and Sunday), they return to their homes. To defray the cost of traveling from their homes to the worksite for the week, the Carrier pays a travel allowance. The travel allowance is a type of weekly compensation that traveling gang employees receive when they have to work more than 50 miles away from their home. Although the allowance is not a strict mileage based reimbursement, the amount received does vary depending on the number of miles an employee travels round trip. A round trip includes returning home from the worksite at the end of the work week and returning to the worksite from home at the beginning of the following work week. Employees self-report the miles they travel to receive reimbursement, and all employees must certify that the amount of mileage reported is accurate and truthful.

In December 2011, a Carrier official conducted a random audit of travel allowance payments. In the course of that review, the Claimant's reimbursement requests for travel to and from a home address in Walland, Tennessee were verified as being correct. In January 2012, the Carrier performed a review of all employees whom are required to hold drivers licenses or commercial driver's licenses to perform their job duties. All employees subject to these requirements on Timber and Surfacing Gang 33 were asked to present their licenses for verification. At that time a Carrier official discovered that the Claimant possessed a Maryland driver's license, issued June 24, 2011, which identified the Claimant's home address as being in Salisbury, Maryland. Since the Claimant was requesting travel allowance reimbursements from a home address (Tennessee) different from the home address stated on his license (Maryland), he was removed from service pending an investigation on January 12, 2012. The Carrier conducted a formal investigation including a hearing on January 31, 2012. The Carrier found the Claimant guilty of conduct unbecoming an employee due to his actions of falsifying travel reimbursement requests. The Claimant was dismissed via letter on February 13, 2012.

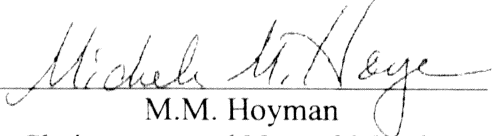
The Carrier's position is that the Claimant is clearly guilty of making repeated travel allowance requests based on the false pretense that he resided in Tennessee when he actually resided in Maryland. The date of the Claimant's Maryland license issuance clearly establishes that at least from June 24, 2011 until he was removed from service the Claimant was living in Maryland. The Carrier notes the net effect of this was that the Claimant received a much higher travel reimbursement amount than he was entitled to because there was a difference of hundreds of miles between the two addresses and the bulk of the worksites the Claimant was working at during this time period (see Carrier Brief, page 8). The Claimant was paid approximately twice as much as he would have received if he had accurately reported his travel as coming from his Maryland address – resulting in thousands of dollars in improper payments (see Carrier Brief, pages 9-10). There can be no dispute that the Claimant's residence was actually in Maryland because in order to obtain a Maryland license the Claimant would have to demonstrate residence in Maryland by supplying at least two residency documents. The Carrier does not find merit in the explanations the Claimant gave for how he could have obtained a Maryland license while actually residing in Tennessee, which is what he testified to at the hearing.

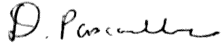
The Claimant submitted mail addressed to him in Tennessee, but the mail was either dated before the issuance of the Maryland license or was not of a nature that could establish residency (such as a utility bill or lease statement could). The Claimant also tried to explain his actions by stating he was able to get Maryland Department of Motor Vehicles employees to accept one proof of residency document (instead of the two required by law), which the Carrier points out would mean he falsified his address to obtain government documents (see Carrier Brief, page 14).

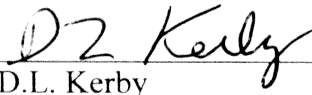
The Organization maintains the Carrier failed to meet its burden of proof, which in this case is heightened beyond the normal “substantial evidence” standard because the charges allege moral turpitude. The Organization notes the Claimant testified he obtained a Maryland license because he was buying a car in the area and could obtain a “great deal” on the car in that state, a deal was not then available in Tennessee. The Organization alleges that the Carrier has offered no evidence to refute the Claimant’s contention that he was able to obtain a Maryland license without actually residing in the state. Furthermore, the Organization argues that the Claimant’s state of legal or official “residency” is irrelevant because what matters is where he actually lived when traveling and requesting reimbursements. The Organization contends that the Carrier has offered no evidence that the Claimant could not have had legal or official “residence” in Maryland but still travel to and from work by actually living at the Tennessee address.

The Board does not find enough evidence in the record to support the Claimant’s justifications for how he could have an official Maryland residency but legitimately claim travel reimbursements to/from an actual home address in Tennessee. It seems unusual that there would be any relationship between a purchase of a car and a need to obtain an in-state license, and even more unusual that the car sale documents would be accepted as sufficient to obtain a license by Maryland state officials, when these documents are not sufficient to prove residency according to the state’s own legal requirements. We give particular weight to the testimony from Supervisor Willis which states that the Claimant said he only travels to Tennessee “...sometimes but not every weekend,” a statement which we do not find was sufficiently refuted in the record (see Transcript, page 11). The level of misconduct in this case is particularly egregious because of the type of dishonest actions the Claimant engaged in. The Claimant appears to have intentionally and fraudulently requested thousands of dollars of travel reimbursements which he was not entitled to. For these reasons, the Board finds that it must deny the claim.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


D. Pascarella
Employee Member


D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on June 20, 2013.