

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4772

Heard in via Video Conferencing in Montreal and Calgary, March 9, 2021

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor S. Rafiqui of Saskatoon, SK, concerning the assessment of discharge for “filing improper meal/mileage expense claims for May 10, September 22 to 26 inclusive and October 17, 2019.”

JOINT STATEMENT OF ISSUE:

The grievor filed expense claims for monies to which he was not entitled, including on May 10; September 22, 23, 24, 25; 16 and October 17, 2019 when he did not work. The Company held an investigation and determined that the grievor was culpable for his actions and discharged him from service effective November 07, 2019.

The Union contends that there was no evidence to suggest that the grievor intentionally attempted to defraud the Company. The Union’s position is that the discipline assessed was excessive and should be expunged or, in any case, reduced and the grievor’s record made whole.

The Company maintains that the grievor was culpable for his actions and disciplined accordingly. The grievor admitted to claiming monies to which he was not entitled during the periods in question. By doing so, he irreparably broke the bond of trust between employer and employee. The Grievor’s actions deserved significant response and discharge was appropriate.

FOR THE UNION:
(SGD.) R. S. Donegan
General Chairperson

FOR THE COMPANY:
(SGD.) D. Houle (for) **D. Klein**
Senior VP Human Resources

There appeared on behalf of the Company:

V. Paquet – Manager Labour Relations, Toronto
S. Blackmore – Senior Manager Labour Relations, Edmonton
G. Guest – Superintendent, Saskatoon

And on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto
R. Donegan – General Chairperson, Edmonton
J. Thorbjornsen – Vice General Chairperson, Edmonton

M. Anderson – Vice General Chairperson, Saskatoon
S. Rafiqui – Grievor, Saskatoon

AWARD OF THE ARBITRATOR

The grievor was hired as a conductor in August 2013. He is stationed in Saskatoon. Between February and October 2019, the grievor was often assigned as a conductor to outpost assignments in Biggar, Saskatchewan.

Employees working outpost assignments away from their home terminal are entitled to claim meal expenses of \$25.00 per day, pursuant to Article 119 of the collective agreement. During the February to October 2019 period, the grievor submitted some 30 different travel and expense claims. In total, the grievor claimed the daily meal allowance for 126 days during this period as well as the kilometre travel rate for driving his personal vehicle to and from the Biggar outpost. The payments totaled approximately \$4,902.00. They were submitted as required to the grievor's supervisor for review and approval.

Travel expenses are submitted by employees through on-line tool (SAP). It is separate from the system used to submit wage claims (CAT). Employees claiming expenses must follow the specific data entry requirements of the SAP system. Each expense must be entered into the system with exact details of the claim. For example, meals are entered under the "receipt" tab and mileage is entered under the "trip segments" tab. Employees are also required to enter, through the drop-down menu, the trip start and end date as well as the reason and location of the expense.

During a regular audit of expenses, the Company determined that the grievor had submitted multiple claims where he was either unavailable for work or had booked off sick.

The audit revealed that the grievor had submitted the following claims, as set out in the Company's brief:

- The grievor submitted a travel expense claim for a five-day period covering May 6th to May 10th. However, the grievor did not work on May 10, 2019. Company records confirm he was booked off under code N85 (on company business – medical) on May 9 at 1829 and did not book back on until May 10 at 1948.
- The grievor submitted multiple travel expense claims. One was for a five-day period covering September 22nd to September 26th. However, the grievor did not work during that period, yet still claimed meals and mileage. Company records confirm he was removed from service at 1335 on September 20, 2019 under code H06 (held out of service pending investigation) and did not book back on until 0945 on September 26.
- The grievor submitted travel expenses for a five-day period covering October 13th to October 17th. However, the grievor did not work on October 17, 2019. Company records confirm the grievor booked off sick at 0539 on October 17th and was automatically booked back on at 0539 October 18, 2019.

The grievor attended the Company investigation into his expense claims on November 7, 2019. The Company pointed out 7 instances outlined above where the grievor claimed for days that he was not entitled to make claims. The grievor stated at his investigation that it was his own carelessness that caused the discrepancies in his claim:

Q 35: Knowing you are not at work for those dates in question, why would you even submit them for expense claims?

A: I did multiple weeks at a time and didn't bother to look

Q 36: Expense submissions trip #100912831 was submitted for only the week of September 22 – 26 for meals and mileage, can you explain the discrepancy of your previous answer?

A: Once again, multiple weeks submitted at the same time but on different claims but that being said I should have been more diligent in ensuring my claim was correct.

Q 37: In SAP, just prior to sending all claims for approval there is a box to check that ass the submitter if the claims being submitted are accurate and correct, did you read and understand that box?

A: I just hit it.

The grievor went on at the conclusion of his investigation to apologize for his *“laziness and not doing my due diligence when it came to submitting the claims”*. As noted in the Joint Statement, the grievor was discharged on November 12, 2019 for *“filing improper meal/mileage expense claims for May 10, September 22 to 26 and October 17, 2019 as he had not worked those days for which he claimed expenses”*.

The Company maintains that the grievor’s response at his investigation that he did multiple weeks of expense claims and *“did not bother to look”* displays a negligent and cavalier attitude towards his work. The grievor understood that making expense claims is based on the honour system; receipts are not required. This put the onus on the grievor to be particularly accurate with his expense claims. The grievor also knew at all times that he had a fundamental duty to attend work in order to be eligible for expense reimbursement. The Company takes the position that the grievor’s claim for expenses he was not entitled to on three different occasions in May, September and October, 2019 was an intentional act on his part. Running trades employees like the grievor are in a position of trust, including the responsibility of claiming the proper amount for both wages and expenses. The Company maintains that the grievor breached that important bond of

trust and merits termination for his deliberate and negligent falsification of his outpost expense claims.

The Arbitrator notes, as pointed out by the Union in argument, that the Company identified three separate claims during the months of May, September and October 2019 which amounted to a total of \$175 (7days x \$25/day) and \$56.40 for 188 kilometres. To put those three claims in context, the grievor submitted some 30 different travel expenses claims, often for multiple days. during the period between February 17 and October 31, 2019, while working on the Biggar outpost. During that same period, the evidence is that the grievor failed to submit meal and kilometre claims for 7 days that he did in fact work including: April 2, 2019 (1 day), October 6-10 (4days) and October 23, 24, 2019 (2 days).

It is clear from the numerous decisions of this Office that a fraudulent claim is a form of theft which goes to the root of the trust relationship. That was the case in **CROA 1835** cited by the Company where Arbitrator Picher upheld a dismissal of an employee with twelve years of service:

In the instant case the conduct of the grievor is a form of theft. It is trite to say that such conduct, particularly in a position where a relationship of full trust is essential to the nature of the job, the most serious measure of discipline is justified. Decisions resulting in dismissal have consistently been upheld by this Office in such circumstances (see **CROA 461, 478, 899, 1472 and 1474**).

In the circumstances the Arbitrator is compelled to conclude that the Company had reasonable grounds to terminate the grievor's services, in light of his deliberate act of fraud. No compelling mitigating circumstances are made out, and the grievance must therefore be dismissed.

The element of deceit is fundamental to any finding of fraud or theft. The standard of proof is a balance of probabilities test, albeit at the higher end of the test. Clear evidence of culpability is required given the severe disciplinary consequences that typically flow from a finding of fraud.

The fact that the grievor in this case made false claims for seven days in three different months in 2019 raises suspicions regarding his intentions. However, as the Union pointed out, the facts are that the grievor properly filled in 97% of his claims during this same claim period between February 17, 2019 and October 31, 2019. In addition, and of particular significance when assessing the grievor's intentions, is the fact that he mistakenly failed to submit claims for seven days during this same period when he did in fact work. The net result is that the Company was not out-of-pocket given the days improperly claimed and the days missed cancelled each other out.

The issue of penalty in cases of this kind is important. When it comes to making expense or wage claims, particularly when those entries are performed on an honour system, accuracy is of paramount importance. It falls on the shoulders of the employee to take the time necessary to check, and double-check, their computer inputted claims to ensure they are correct. After all, once the SEND button is pressed, the employee is asserting for all purposes that he or she is entitled to the expense claim money. It is not up to the supervisor who approves the claim requests to check each claim form for accuracy. That would defeat the purpose of the honour system.

Given the importance of accuracy and honesty in submitting expense claims, it is this arbitrators' view that this grievor was, as the Company asserts, both cavalier and careless in the period of time identified in 2019. Although I accept his assertion that his expense claim errors occurred more out of laziness and carelessness than any act of deceit, there is clear cause for a significant disciplinary response.

The arbitrator notes, in a number of the decisions tabled by the parties, that an employee's termination was set aside in cases of careless expense entries where the arbitrator hearing the case was satisfied there was no fraudulent intent. In a number of those decisions, there was also no compensation order accompanying the reinstatement. See: **CROA 2854, 3433, 4198.**

The arbitrator finds, in the end, that the grievor lacked the intent to deceive his employer. On the other hand, he was careless and negligent when filling out his expense claim forms. Following the authorities of this Office, the Arbitrator directs that the grievor be reinstated to his employment forthwith without loss of seniority but without compensation. His disciplinary record shall show his period out of service as a suspension for his misconduct.

March 23, 2021



JOHN M. MOREAU
ARBITRATOR