

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13677

Docket No. 13572

02-2-00-2-54

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(International Brotherhood of Electrical Workers
(System Council #16)

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railroad
((former Burlington Northern Railroad)

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 35 in particular, Mechanical Department Electrician H. J. Griffin was unjustly dismissed from the Burlington Northern Santa Fe Railroad Company following an investigation held on August 26, 1998.
2. That the investigation held on August 26, 1998 was not a fair and impartial investigation under the terms required by the rules of the current Agreement, and that the dismissal of Mechanical Department Electrician H.J. Griffin was unjust, unwarranted and excessive.
3. That on November 16, 1998, Mechanical Department Electrician H. J. Griffin was advised that he was returned to Carrier service effectively reducing this dismissal to a suspension from service.
4. That accordingly, the Burlington Northern/Santa Fe Railroad Company should be directed to restore Mechanical Department Electrician H.J. Griffin’s seniority rights and that he be made whole for all lost wages, rights, benefits and privileges due him which were adversely affected by this unjust suspension and further that all record of discipline be removed from his personal record.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was regularly assigned as an Electrician at the Carrier's Havelock Car Shop in Lincoln, Nebraska. On July 12, 1998, the Claimant traveled to Alliance, Nebraska, for a safety program. He checked in at the Holiday Inn Express at approximately 5:00 P.M. According to the Claimant, the room rate was \$53.10 and he paid that amount to the clerk in cash.

The Claimant testified that a fellow employee, Greg Burri, was also attempting to check in at that time. Burri informed the clerk that a special rate of \$35.10 had previously been approved by the motel for the employees attending the safety program. The clerk checked with the manager, and it was agreed that the employees would be given the standard room at a discounted rate of \$35.10.

On the morning of July 13, the employees, including the Claimant, checked out of the motel. The Claimant testified that he did not obtain a receipt at that time because the one he had originally been given when he checked in was accurate.

On July 15, General Foreman Crilly was instructed to go to the Holiday Inn Express in Alliance and see the manager to discuss the matter of the rate charged the Carrier employees on July 12, 1998. It was determined that the manager had not agreed to a rate of \$35.10 for the standard room. Therefore, General Foreman Crilly paid the difference between the rate of \$53.10 and \$35.10 paid by the Claimant and another employee to settle the account for those employees.

The Claimant submitted his expense account on July 22, 1998, indicating thereon that he paid \$53.10 for the lodging at Alliance, Nebraska, on July 12, 1998, and seeking reimbursement for his out-of-pocket expenses.

Formal Investigation was scheduled for August 26, 1998 for the purpose of determining the Claimant's responsibility, if any, in connection with the alleged falsification of his lodging expenses. Following the Investigation, the Claimant was dismissed from service for violation of Rule 28.6. By letter dated November 12, 1998, he was reinstated to service effective November 16, 1998. The instant claim seeks reimbursement for the period of time the Claimant was held out of service.

The Board has carefully reviewed the transcript as well as the correspondence of the parties during the on-property handling of the dispute. On the basis of this review and after full consideration of the testimony and evidence, the Board concludes that the burden of proof which must be achieved by the Carrier in a discipline case has been met. The discipline imposed was supported by substantial probative evidence.

General Foreman Crilly investigated the matter and produced a document from the motel, with the Claimant's signature affixed, indicating that the Claimant's lodging on July 12 was only \$38.08 and it was that lesser amount that was actually paid by the Claimant. In fact, Crilly paid the difference between the higher and lower rates on behalf of the Carrier.

The Claimant's assertion that he paid, or thought he paid, \$53.10 for lodging does not withstand scrutiny. The "receipt" he offered was not a receipt at all but a room confirmation. The document the Claimant produced as a valid receipt only indicated the room rate. It did not show any charges such as state tax, local tax or occupancy tax. All of those items would have been included on a true receipt for lodging, the record shows.

Moreover, even if the Claimant originally paid \$53.10 for the lodging at the outset, both he and Burri acknowledged that the room rate was lowered, in the Claimant's presence, to \$35.10. Hearing Officers, like other fact finders, must make determinations based on logic and real life experience. It is highly improbable that the Claimant voluntarily paid a room rate higher than that which was offered by the clerk without seeking the difference between the two rates. On this record, we cannot say that the Hearing Officer erred in rejecting the Claimant's explanations and finding that the Claimant did in fact falsify his lodging expenses.

During the progression of the claim on the property, the Organization alleged that the Claimant was not afforded a fair and impartial Investigation. The Board does not share that view. Nor do we agree that the failure to cite a Rule violation in the Investigation Notice amounted to harmful error. The Carrier's charges were sufficiently clear to put the Claimant and the Organization on notice of the substance of the alleged offense, and nothing more was required from a contractual standpoint. See, Second Division Awards 8135, 8928, 13560.

As a final matter, the Organization argued that, had the Carrier been able to support the dismissal, it would not have reinstated the Claimant to service. However, it is not the Board's function to look behind the settlement of a case by the parties. From the Board's viewpoint, the Claimant was fortunate to regain his employment after committing a serious offense. Concluding as we do that there was substantial evidence to support the charges, the imposition of a 60-day suspension was neither unreasonable nor unwarranted.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 11th day of February, 2002.