

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway Company)

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

(1) The dismissal of Mr. B. R. Irions, for allegedly claiming lodging expenses in November and December 1988, which he had not incurred, was arbitrary, capricious, based on unproven charges and in violation of the Agreement (System File B-1350-6/EMWC 89-4-17 SLF).

(2) Claimant B. R. Irions shall be returned to service with seniority unimpaired, his personal record cleared of the charges leveled against him and compensated for all wage loss suffered."

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

On January 6, 1989, the Claimant was removed from service for allegedly submitting fraudulent expense vouchers. Subsequent to an investigation, the Claimant was dismissed from service.

In November and December of 1988 it was necessary for the Claimant to be away from his home location, and thus he was entitled to be reimbursed for actual reasonable expenses. Carrier paid his November expense voucher which showed a hotel room rate of \$25.50 per night, however, it did not pay the December request because Carrier gained the suspicion that the Claimant had actually resided in a Tie Gang's Camp car rather than at the motel.

The Carrier's special agent investigated the matter and she reported that the motel personnel stated that the room rate was \$16.00 per night, not the \$25.50 submitted in November or the \$25.00 per night submitted in December. Further, although the motel only has fifteen rooms, no one remembers the Claimant as a guest at the motel except for one (1) night.

When he was questioned about the matter, the Claimant failed to give a satisfactory explanation, but he did expand on the discrepancies at the investigation. The Claimant insists that he was a guest at the motel for the entire time. He concedes, however, that the nightly room rate is only \$16.00. He states that he paid the additional \$9.00 for the privilege of leaving his suitcase at the motel during the day since the establishment has a "pay as you go" each day arrangement. Because he had vehicle problems he could not take his clothes with him each day. The record is not entirely clear as to how he was transported to and from work without an automobile.

The Claimant also concedes that he was never actually registered at the motel under his own name, since some people were "looking for him" and he preferred to remain incommunicado.

The Claimant prepared his own receipt, because the clerical personnel at the motel were illiterate, he claims.

The Organization questions that the Carrier has presented sufficient evidence to warrant a finding against this Claimant since it failed to present the appropriate witnesses to that end. We have held many times that the Carrier presents whatever witnesses it desires in an effort to establish a prima facie case. If it does not call all conceivable witnesses, it assumes a risk that the charges will be dismissed. If, however, it has made out a basic case, it may then be incumbent upon the Claimant to call his own witnesses in an effort to exonerate himself. Of course, Carrier may not hinder the right of the Claimant to call his witnesses.

Here, the Carrier made out a prima facie case. Wherever the Claimant may have slept the records available to the Carrier show that he didn't stay at the motel. The allegation of an incommunicado registration, illiterate personnel and a \$9.00 per day charge for storing a suitcase do not convince us of innocence. The Organization attempted to show that the motel is used primarily for illicit sex by the hour. If that is the case, there is no question that a regular guest in the traditional sense would have been quite visible and it would have been a very easy task to produce a witness from the hotel which was three (3) miles from the hearing site. There is no evidence that the Carrier intimidated those potential witnesses.

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Award No. 28832
Docket No. MW-29226
91-3-90-3-101

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.