

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30056
Docket No. SG-30323
94-3-92-3-62

The Third Division consisted of the regular members and in addition Referee Robert T. Simmelkjaer when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalman
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(Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern (BN) Railroad:

Claim on behalf of J.C. Norvell, for reinstatement to service with all lost time and benefits restored, account of the Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 54, when it dismissed him from service."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This dispute began when, in a notice dated November 5, 1990, the Carrier ordered the Claimant to attend an Investigation for the purpose of "... ascertaining the facts and determining your responsibility, if any, in connection with your alleged intent to defraud the Burlington Northern Railroad of \$100.00. This charge arises from an incident where the Claim Department gave you \$100.00 to rent a motel room for three nights following your surgery on 9-25-90 but you were unable to provide a receipt verifying that you actually incurred this motel expense. . ."

Following an Investigation held on November 12, 1990, the Carrier issued a letter dated November 19, 1990 dismissing Claimant "... for dishonest conduct and pilferage account of your actions to defraud the Company. . ."

The Organization maintains that the Carrier's case is procedurally defective, in that, the Investigation was in violation of the time limits of Rule 54, Paragraph A which reads as follows:

"...an investigation shall be set promptly to be held no later than fifteen (15) calendar days from the date of the occurrence, except that personal conduct cases will be subject to the fifteen (15) day limit from the date information is obtained by an officer of the Carrier".

Although the Carrier's Claims Manager knew on October 15, 1990 that Claimant was unable to furnish a receipt from the motel, it was not until the Special Agent's report on 11/1/90, received by the Carrier on 11/3/90, that the Carrier became aware that Claimant had not stayed at any motel in the Galesburg area from 9/25 through 9/27/90. When the report indicated that the receipt Claimant produced from the Galesburg Inn for six days lodging in the amount of \$158.40 from 9/26 to 10/1/90 had not only been altered from its original indication of 3 days lodging for \$79.20 but also had been obtained fraudulently in that there was no record Claimant had stayed there, evidence that Claimant intended to defraud the Carrier became available. The Galesburg Inn Clerk provided a statement that she provided Claimant with receipt #5510 for three days on 11/6/90 without checking the record.

Upon review of the entire record, the Board finds substantial evidence that Claimant attempted to defraud the Carrier by accepting money for the purpose of renting a motel room while recovering from knee surgery and not using the money for the purpose set forth in the "Agreement for Advancement of Funds." He also attempted to further defraud the Carrier by requesting supplemental funds by alleging he stayed at the original motel for three additional days after he had canceled his reservation. Moreover, Claimant sought to avoid discipline by obtaining a receipt under false pretenses and altering it to suit his objective.

Claimant's inconsistent and conflicting statements as well as his submission of fraudulent documents provide convincing evidence of his guilt. From this evidence it is clear that Claimant had no intention of repaying the monies advanced or reimbursing the Carrier in any form but rather attempted to convert it for personal purposes and thus defraud the Carrier.

Claimant violated Rule 530 of the Maintenance of Way Department which reads:

"Conduct-Employees must not be careless of the safety of themselves or others, neglect, insubordinate, or

dishonest, immoral or quarrelsome."

In receiving \$100.00 from the Claim Agent to rent a room for three nights, and not renting a room for three nights, Claimant was in non-compliance with the rule, notwithstanding the Organization's position that he "agreed to repay the money before receiving it, had nothing to gain by collecting the money" and was not required to use it"... exclusively for living expenses."

The Organization further contends that Claimant signed an Agreement indicating that he had accepted the \$100.00 advance for "... living and other expenses ...". Since the Agreement also stated that the money advanced "... will be deducted from any payment made by settlement or compromise...", without the requirement of receipt or verification of disbursement, the Organization concludes the Advance was merely a loan.

The weight of the evidence persuades the Board that Claimant had no intention of repaying the money in the event settlement or compromise of his claim did not materialize but had devised a fraudulent scheme for converting it for personal purposes replete with false statements and documents. Had Claimant not actively sought additional days on the pretext of extending his motel stay and subsequently compounded his malfeasance with misleading testimony and altered receipts, his adherence to the basic conditions of the Agreement, specifically the use of the money for living expenses, might have provided a defense.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.