

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32199  
Docket No. MW-32896  
97-3-96-3-250**

**The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(Southern Pacific Transportation Company**  
**( Eastern Lines)**

**STATEMENT OF CLAIM:**

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

- (1) The dismissal of Machine Operator A. L. Lindsey for alleged violation of Rules 1.6 and 1.25 of the Safety and General Rules for all Employees '... for your dishonesty and your use of the credit of the railroad without authority ... between November 27, 1994, and December 15, 1994.' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File MW-95-135/MW D95-15 SPE).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated with all seniority, vacation and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered beginning December 15, 1994 and continuing until reinstated to 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 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.

Claimant was dismissed from service on January 26, 1995 for the use of the credit of the Carrier without authority and dishonesty in violation of Rules 1.6 and 1.25 by staying at the Hampton Inn in Victoria, Texas, and direct billing his room to the Southern Pacific Railroad without authority between November 27 and December 14, 1994.

The Carrier contends that these charges were fully proven and that such acts of misconduct are dismissible offenses.

The Organization contends the Carrier failed to prove the charges levied against the Claimant. Claimant was not aware his decision to obtain lodging facilities at the expense of the Carrier for the days in question was improper. Claimant was under the understanding that such usage was condoned by Carrier supervision. Claimant did not intentionally misuse the Carrier's credit.

The Organization further contends that even if the Claimant was guilty as charged, the penalty of dismissal is totally excessive and unwarranted.

Finally, the Organization contends that the claim is sustainable because the Claimant was denied due process on two occasions. First, the Carrier failed to produce, per the Organization's request, a copy of the bulletin assigning the Claimant. Second, the Organization failed to produce a vital witness, the Placement Clerk, to offer testimony even though the Organization made two requests for this witness at the Hearing.

This Board finds there is substantial evidence in the record supporting the charges. Records from the Hampton Inn show the Claimant stayed in that facility on the dates in question and direct billed his lodging to the Carrier. Claimant also direct

billed the Carrier for lodging on two Sundays (11/27 and 12/11) when he performed no work for the Carrier.

The Organization contended Claimant was on a non-headquarters position at the time for which expenses were made. This Board finds otherwise. Roadmaster Swoboda testified that he had previously told Claimant that expenses would not be paid for trucks headquartered in Victoria. Even if the job were a headquartered one, only per diem expenses would be paid, not lodging. Finally the location of the job is totally irrelevant to charging lodging expenses on two Sundays when no work was done.

When Claimant informed Roadmaster D. F. Swoboda that he had been direct billing his room at Hampton Inn, Swoboda told him to check out of the Inn and pay the bill. When Swoboda went to the Inn two days later to get billing records, Claimant had not paid the bill.

The Organization's due process arguments were not persuasive. The request for records was related to the position of the Organization that is not material. In view of the Claimant's testimony that the Placement Clerk did not know whether the job was expense or not, it is unclear how the testimony of this witness would be relevant.

### **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 Third Division**

Dated at Chicago, Illinois, this 17th day of September 1997.