

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32605
Docket No. MW-33538
98-3-96-3-1106

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of employe D. W. Nash for his alleged dishonesty and misuse of a Company CLC card on various dates between February and June 1995 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File SPG-D-9492/12(96-159) CSX].**
- (2) The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be 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 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 advised on November 20, 1995 to attend an Investigation to determine facts and place responsibility, if any, in connection with his staying at corporate lodging facilities without proper authorization on 23 different nights. After the Investigation took place on December 5, 1995 the Claimant was advised on December 15, 1995 that he had been found guilty as charged and he was discharged from service.

There are time limit objections raised by both sides in this case. After study of the record the Board concludes that these objections should be dismissed. The charges against the Claimant were properly filed by the Carrier on November 20, 1995 which was only approximately a week after the Carrier first became aware of alleged irregularities concerning Claimant's use of his Corporate Lodging Card. Further, the appeal by the Organization under date of February 8, 1996 was properly issued since the discharge letter was dated December 15, 1995. Accordingly, the claim must be ruled on in accordance with its merits.

The record shows that the Claimant used his Corporate Lodging Card to pay for lodging at five different locations from February 3 through June 21, 1995 on 23 different nights which the Carrier argues constituted unauthorized use of his card. The locations in question were Frederick, Maryland; Harpers Ferry, West Virginia; Charleston, West Virginia; Hancock, Maryland and Pikesville, Kentucky. The dates were: February 3-4, March 2-3, 18, 24-25, 31, April 1, 8, 19-22, 28-29, May 6, 18-19, 21-22, and June 13 and 21, 1995.

The Claimant testified that he had permission to stay at the lodging facilities in question from Gang Supervisor Don Nichols, who had been discharged by the Carrier prior to the Investigation and did not appear as a witness. But according to the Carrier, which is not disputed by the Claimant, Nichols had been terminated by the end of March 1995, and 15 of the dates on which the Claimant is accused of using the Corporate Lodging Card improperly, as can be seen from the dates listed in the foregoing, took place in April 1995 or thereafter. Thus, the Claimant could not have had permission on the latter 15 days to use his card from Nichols because Nichols was no longer in the employment of the Carrier on those dates. Further, to compound the problem, the Claimant himself was out of service on the last six dates cited by the Carrier. Neither the Claimant, nor Nichols, was in the employment of the Carrier on these latter dates, yet the Claimant continued to use the Corporate Lodging Card.

The Claimant testified that he had some personal problems with his marriage in May 1995 and, as a result, checked into a mental hospital on or about May 19, 1995.

Obviously he did not do so immediately because he continued to use the Corporate Lodging Card during the period of May 18-22, 1995 on four different nights at two different locations. Further, while the Board is sympathetic with the duress the Claimant may have been under because of his personal problems, such does not explain the premeditation involved in his unauthorized use of the Corporate Lodging Card on 17 different occasions prior to that time.

The Claimant's testimony lacks credibility and on basis of substantial evidence the Board has no alternative but to conclude that he is guilty as charged. Arbitral forums in this industry have defined substantial evidence as such ". . . relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . ." (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). On basis of such evidence present in this case the Board concludes that the Carrier met its burden of proof.

The Claimant's unauthorized use of the Corporate Lodging Card represented theft of Carrier's property. Arbitral precedent in this industry is emphatic that theft and dishonesty is a serious offense for which assessment of dismissal is proper (Second Division Awards 6214, 6615, 7519; Third Division Awards 13130, 24567). On basis of the record before it the Board can find no reasonable grounds for diverging from such precedent in the instant case.

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 22nd day of May 1998.