

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30023
Docket No. MW-29900
94-3-91-3-278

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Illinois Central Railroad

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

- (1) The dismissal of Trackman J. Murphy for alleged violation of '...Rules 36, falsifying Sign-in sheet for the Days Inn on Dauphin Island Parkway, Mobile, Alabama for Monday March 26, 1990 without authority, insubordination, and failing to comply with instructions.' was unwarranted and in violation of the Agreement (Carrier's File 137 MofW).
- (2) The Claimant shall be allowed the remedy stipulated in Rule 33(i)."

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.

Claimant has been in Carrier's service for 16 years, and holds a position as a Trackman. Prior to his dismissal, Claimant was working on Gang 4098 in Mobile, Alabama. Pertinent Carrier policy, according to the Track Supervisor, is stated as follows:

"We have made arrangements at certain motels for the men to stay for the rate the company allows that they will pay. All the employee has to do when he works that day is to come by the motel that afternoon when he gets off and

there's a sign-in sheet provided at the motel. Employees are encouraged to "double-up" and are responsible for any amount which exceeds Carrier's allotted lodging allowance."

Preceding this incident, Claimant was informed that he had been displaced from his regularly assigned Trackman's position by a senior employee, and that his final day of work would be March 23, 1990. When Claimant made subsequent inquiries as to where he would be able to exercise his seniority, he was informed that a junior employee was working in Hammond, Louisiana. On Sunday, March 25, 1990, Claimant left his home in Jackson, Tennessee, and traveled over 400 miles to Hammond for the purpose of displacing the aforementioned junior employee. However, when Claimant arrived at work on the morning of Monday, March 26, 1990, he was advised that he could not work as the junior employee(s) had also been "cut-off," and Claimant did not have sufficient seniority to displace any remaining employees at that site.

Subsequent to the above exchange, Claimant called the Track Supervisor in Mobile, Alabama, and was told that there were two junior employees assigned to Gang 4098. Claimant advised the Track Supervisor that he intended to displace one of the junior employees, and requested directions and information on how to get to the motel which was assigned to the gang in Mobile.

According to Claimant, after his arrival at the Days Inn, and while waiting to consult with the Section Foreman, he engaged in conversation with the Track Supervisor. The Track Supervisor maintains that he informed the Claimant that he would not be entitled to lodging on March 26, 1990, because he had not worked that day. Claimant maintains, however, that both the Track Supervisor and the Section Foreman informed him only that he would be responsible for tax on the room in the amount of \$1.80, which Claimant in fact paid for each of the three nights he stayed.

Claimant worked with the gang in Mobile on Tuesday, March 27, Wednesday, March 28, and Thursday, March 29, 1990. Claimant departed Mobile on Thursday, March 29 in order to observe a personal day on Friday, March 30, 1990, in Jackson.

On April 2, 1990, Carrier received a bill for the lodging furnished to numerous Carrier forces, among which was a bill for Gang 4098. In accordance with normal procedure, the Track Supervisor reviewed the bill, compared it with the accompanying sign-in sheets, and on April 9, 1990, approved it for payment. However, when the Track Supervisor subsequently audited the register log with payroll, he discovered that Claimant had charged

the Carrier for lodging on a day he was not actually in Carrier's service (Monday, March 26).

On June 1, 1990, Claimant was instructed to attend an Investigation in Jackson, Mississippi, "...to determine if you violated Rule 36, falsifying sign-in sheet for the Days Inn on Dauphin Island Parkway, Mobile, Alabama, for Monday, March 26, 1990, without authority, insubordination, and in failing to comply with instructions."

Following several postponements, the Investigation was held on July 23, 1990. Subsequent to the Investigation, Claimant was dismissed effective August 1, 1990.

The Carrier asserts that "Claimant intentionally attempted to defraud the company of lodging expenses." Carrier points to the testimony of the Track Supervisor in which he stated that he had informed the Claimant he "would not be entitled to lodging on Monday, March 26, 1990, because he had not worked that day." Further, Carrier cites the sign-in sheets for the day at issue. Claimant's signature appears on the sheets for Tuesday, March 27 and Wednesday, March 28, 1990, but his signature is not on the sign-in sheet for Monday, March 26. However, it appears Claimant did affix a second signature on the sign-in sheet for March 28. Following the last employee entry on the sheet, Claimant again signed his name, and entered "March 26, 1990" in the date column. The Carrier argues that this "last minute entry is indicative of the Claimant's purposeful intent to defraud the Carrier."

The Organization maintains that the Claimant was not informed at any time that he was not entitled to lodging on the night of March 26, 1990. It notes that Claimant denied the Track Supervisor's assertion that he informed Claimant to that effect, and maintained that both the Track Supervisor's and the Section Foreman's only concern was that he remember to pay "any expenses which exceeded" Carrier's allotment. Claimant further stated that he did, in fact, sign in on the night of March 26, but did so after the rest of the gang, because he was engaged in conversation with the Section Foreman. Further, the record reveals that the Claimant readily admitted that he checked into the Days Inn on March 26, 1990 and gave a complete and reasonable explanation for his actions concerning the sign-in sheet for the date in question. He made no attempt to hide the fact that he had done so, and was entirely forthright and honest with respect to said actions. Moreover, the Section Foreman testified to the effect that he thought the Claimant was entitled to a room because of the circumstances under which the Claimant displaced onto the Gang.

The Board has carefully reviewed the testimony in the record before us. The facts of this dispute, as stated by the parties, appear to be straightforward, with the exception of the conversation between the Claimant and the Track Supervisor on March 26, 1990.

As is evident from past decisions by this Board, we do not now, nor have we ever, condoned employee falsification of records. Certainly, the Carrier must be able to rely on its employees to be forthright and honest when submitting expense reports to the Carrier. The Carrier is well within its rights to expect employees to adhere to its Rules. Claimant was not in Carrier's service on the day in question, and was therefore, not entitled to the lodging allowance. In view of Claimant's long tenure with the Carrier, his action bespeaks serious disregard of his record-keeping responsibilities. Accordingly, some assessment of discipline is appropriate. Carrier's penalty of dismissal, however, is excessive under the circumstances.

In light of the foregoing, Claimant shall be returned to Carrier's service with seniority and all other rights unimpaired, but without compensation for time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 21st day of January 1994.