

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32346
Docket No. MW-32853
97-3-96-3-194**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich 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 discipline (removal from service and subsequent dismissal) of Mr. R. N. Staples, Jr. in connection with the charges of '...conduct unbecoming an employee in that it was reported by the Day's Inn desk clerk at Madison, Florida, that you displayed improper conduct towards other motel guests, refused to move to another room, and made a public nuisance of yourself in regards to the use of the telephone. In addition, this clerk reported that you appeared to be intoxicated while occupying the Company provided lodging' was harsh, unjust and in violation of the Agreement [System File SPG-TC-9630/12(95-539) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service, compensated for all wage loss suffered and shall receive credit for all lost days for vacation qualifying purposes.”**

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 employed by the Carrier as an Assistant Foreman and, at the time of the events herein, had approximately 13 years of service. On February 26, 1995 the Claimant checked into a Day's Inn hotel in Madison, Florida, because he was then employed in a mobile gang that involved assignments away from his home. On the weekend of March 3 Claimant was still staying at the hotel when he attempted to make a long distance telephone call. In doing so he experienced difficulty and required the assistance of the hotel desk clerk. Despite the desk clerk's instructions how to place the call, the Claimant continued to have difficulty and made repeated attempts to place the call in a short period of time. As he did so he encountered the desk clerk with each attempt. In addition, during this period of time the Claimant spoke with slurred speech in his conversations with the desk clerk. Finally, after these unsuccessful attempts the Claimant went to a nearby room, occupied by a recently divorced woman, and asked if he could use the phone in that room.

The following day the Claimant engaged in a conversation with some members of a girls' teen age basketball team and their chaperon. In that conversation he asked them what was their destination and addressed one of the teen age girls, of Asian ethnicity, as "Girlsan."

On Sunday of that weekend the desk clerk reported to the Supervisor that the Claimant had been drinking and described her interaction with the Claimant when he attempted to place his long distance call on Friday and his conversation with the girl's basketball team the previous day. As a result the Carrier removed the Claimant from service and, after Investigation, dismissed him for "conduct unbecoming" and for drinking in a room provided by the Carrier.

The Organization first contends that the claim should be granted because of procedural flaws by the Carrier. Specifically, the Organization argues that the charges

against the Claimant were not specific as required by the Agreement, that the only evidence of any misconduct is hearsay and unreliable, and that the Carrier failed to cite Rule G as the basis for the dismissal until after the Investigation on the property.

This Board disagrees with both contentions. With regard to the alleged lack of specificity, it is clear that the Claimant knew of the factual basis of the charges. Here, there is no question that the Claimant had notice of the facts and the allegations against him. This is particularly significant in light of the fact that there is no evidence that he stayed at the hotel in question at some other time, which might have made it impossible for him to know the specific facts relevant to the charge. Moreover, the case cited by the Organization, Third Division Award 17311, is clearly distinguishable. In that case the claimant sought documents in the control of the carrier in order to refute a claim made by the carrier. Similarly, the Carrier's reliance on hearsay evidence does not invalidate the dismissal. First, it is well-settled that hearsay evidence may be used in arbitration. But more importantly, the hearsay evidence in the instant matter is insulated from attack for two significant reasons. First, the Claimant admitted to the facts that form the basis for the charge of misconduct. The record is clear that he admitted making multiple calls to the desk clerk while attempting to place a long distance call, drinking while at the hotel on Saturday afternoon, and speaking with the chaperon and members of the girls basketball team. Second, the record is equally clear that at some point before the Hearing the Organization interviewed the desk clerk in question. As noted above the final procedural argument made by the Organization is that the Carrier failed to cite Rule G as a basis for the dismissal until after the Investigation on the property. Again, the issue is whether the Claimant had adequate notice of the charges against him. It is clear as noted above that he had such notice. Indeed the Organization makes no claim that the express reference to Rule G after the Hearing somehow raised a point that the Claimant could not address at the Hearing on the property.

There is no question that the Claimant admitted to the interaction with the desk clerk and the members of the girls basketball team. More importantly, he also admitted that he had been drinking while at the hotel on Saturday afternoon. Finally, he did not deny, but simply claimed that he could not recall, whether he went to the hotel room of the other guest asking to use her telephone. Therefore, this allegation was not sufficiently rebutted. Accordingly, there is substantial evidence of the alleged misconduct. This, combined with the Claimant's prior record, leads this Board to conclude that the dismissal should remain undisturbed.

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 13th day of November 1997.