

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34974
Docket No. MW-33384
00-3-96-3-897**

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. E. Avery for alleged dishonesty and improper use of a corporate lodging card between March 24 and July 27, 1995 was harsh and excessive [System File SPG-TC-9734/12-(96-72) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with all seniority and benefits unimpaired, his record shall be cleared of the charges 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.

By letter dated December 20, 1995, the Carrier informed the Claimant that he had been dismissed from service following an Investigation based upon charges of dishonesty and improper use of a corporate lodging consultant's card.

Prior to his dismissal, the Claimant had 18 years of service with the Carrier and held seniority as an Equipment Operator on SPG Gang 6XT4. He was regularly assigned to work ten hours each day, Monday through Thursday. His rest days were Friday, Saturday and Sunday.

SPG Gangs perform work throughout the Carrier's system. The work requires each gang member to live away from home during the regular workweek. As a result, the Carrier provides lodging and meal allowances for SPG employees in accordance with the applicable provisions of the Agreement.

In implementing its obligation to provide meals and lodging for SPG employees, the Carrier provided the employees with a Corporate Lodging Consultant's card (CLC). The CLC enables SPG employees to charge for lodging while working away from home. The charges are billed directly to the Carrier.

A routine audit by the Carrier disclosed that the Claimant charged the Carrier a total of 20 nights in suburbs of Cincinnati, Ohio, where his home was located. On 13 of the occasions, the Claimant was on his rest days, on two occasions he was on vacation and one night was spent at a motel during a holiday.

The occasions on which he stayed at the various lodging facilities were all weekend dates. The Carrier found that the Claimant not only received the weekend travel allowance of \$40.00, but also billed the Carrier for lodging over the weekend by using his CLC card.

Section 5 of the written instructions for "CLC Card Use" that were issued by the Carrier on June 14, 1994 provides that an employee is "allowed to secure" lodging at a "location where the Gang will be lodged on the night preceding the beginning of their work week," provided "the distance to be traveled from their home or Headquarters point is great enough to prevent the Employee from obtaining proper rest the night before the start of their work week." The record establishes that the locations of the motels in the suburbs of Cincinnati which the Claimant stayed at were

within 20 miles of his home address. Accordingly the Claimant did not comply with Section 5 of the written instructions.

In addition, pursuant to Section 9 of the written instructions for CLC Card Use, an employee desiring to stay at a designated lodging facility "on a rest day, or the last day of the work week, must obtain advance authorization from their Supervisor." The Claimant said that he obtained advance authorization from his supervisor, D. E. Hanshew after he told him that he had marital problems and was unable to stay at his home. He stated as follows:

"I went to him [Hanshew] and asked him * * that I'm going through a divorce and I don't have a place to stay, so I was wondering could I use the motel once I go home. I said will there be a problem with that and he said he didn't see where there would be any problem as long as I let him know about it. That's when I started asking him because once I get home, I didn't have no place to stay. I wanted to know if I could use the card I said, do I have to pay any additional money and he said no."

Hanshew testified that he had given the Claimant permission to stay in an authorized lodging facility "because of the extent of the drive." Elaborating on his reference to the "extent of the drive," Hanshew said, "if he could only make it halfway home then he would be able to use the corporate lodging."

Hanshew denied granting permission to the Claimant to stay in a motel near his home at the Carrier's expense. He denied that he allowed the Claimant to stay in corporate lodging in his hometown on weekends due to problems while going through a divorce.

The issue with respect to the credibility of the testimony of Hanshew as opposed to the testimony of the Claimant is clearly drawn. We find that the Claimant's testimony is not credible or trustworthy. Viewed objectively it is highly unlikely that Hanshew permitted the Claimant to stay at authorized lodging facilities located in the suburbs of his hometown on weekends which he used as a replacement for his home because he was in the process of going through a divorce. That Hanshew would permit the Claimant to use such lodging facilities, which the Carrier subsidized for a purpose that is personal to the Claimant and not even remotely related to serving the interests of the Carrier is unreasonable.

In addition, the Board acts in the capacity of an appellate Board. It is not our function to second guess the decision of the Hearing Officer with respect to issues that bear upon the credibility of witnesses. See, e.g., Third Division Award 19696 and Public Law Board No. 2917, Award 5.

The conduct of the Claimant is a serious offense reflecting adversely upon his honesty, judgment and integrity. The Claimant's actions cannot be reconciled with the most basic obligations owed to an employer. Consequently, the penalty of dismissal will not be disturbed.

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 20th day of September, 2000.