

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37552
Docket No. MW-36867
05-3-01-3-453

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. S. A. Andrew for alleged violation of Maintenance of Way Operating Rules 1.6 (Conduct) and 1.13 (Reporting and Complying with Instructions) in connection with alleged misuse of Company provided lodging during the months of April and May, 2000 while employed as a 1st Class Structures Mechanic at Everett, Washington was arbitrary, capricious, unwarranted, excessive and in violation of the Agreement (System File S-P-788-O/11-00-0508 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. S. A. Andrew shall now ‘ . . . be immediately reinstated, without impairment, beginning June 29, 2000 and continuing until he is restored to service. Restoration of loss is to include, but not limited to, wages lost, overtime opportunities lost, promotional opportunities and all fringe benefits lost such as insurance, railroad retirement contributions, eat. [sic].”

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 S. A. Andrew, a First Class Carpenter on the Seattle Seniority District since October 1995, was released to return to work after a year-long medical leave on April 5, 2000. After his release, the Claimant was advised by the Manpower Office that he could displace a junior employee on an Oregon mobile crew (a position which would have entitled the Claimant to use corporate lodgings) or bump into a headquartered position in Delta Yard or Interbay. The Claimant accepted the job in Delta Yard, located in Everett, Washington, and began work in mid-April under B&B Supervisor T. J. Driscoll.

The Claimant's address as he had provided it to the Carrier was Marysville - approximately six miles from Everett - which made Marysville his home station. On April 26, the Claimant asked Driscoll whether he could use company-provided lodging, because he had no place to stay. Driscoll told the Claimant, "No, I do not think you are eligible." Subsequently, the Claimant called Inter Motel Leasing (IML) the Carrier's third-party reservations contractor, and reserved a room at the Everett Howard Johnson. The Claimant began staying at the Howard Johnson on April 28, 2000. On May 8, Driscoll heard that the Claimant might be staying at the hotel, and informed his supervisor, D. Gilliam, who subsequently investigated. Gilliam interviewed the Claimant on May 10, 2000. The Claimant checked out of the hotel that day.

By letter dated May 15, 2000, the Carrier notified the Claimant that a formal Investigation would be held to determine the facts and the Claimant's responsibility, if any, for alleged misuse of Company-provided lodging during April and May 2000. Following the Hearing, by letter dated June 29, 2000, the Carrier dismissed the Claimant.

The Organization appealed the Carrier's decision, and the Carrier denied the appeal. Failing to reach a satisfactory resolution of the issues on the property, the parties submitted the dispute to the Board for final and binding resolution.

A June 10, 1999 Agreement between the parties provides in pertinent part:

"Employees force assigned to a headquarterd position which is located greater than 75 miles from both the employee's residence and the employee's home station will be eligible for double occupancy lodging under the BNSF corporate lodging program on each day service is performed at the away-from-home headquarter location...."

A side letter to this Agreement, also signed June 10, 1999, provides in pertinent part:

"[T]he term "Employees force assigned" refers to an employee:

1. Who, in the exercise of seniority, cannot acquire a headquarterd position within 75 highway miles of his 'Home Station' or residence: and who, in the exercise of seniority, cannot acquire a position offering expenses on the seniority district where he or she holds seniority...."

The Organization makes several assertions in support of its argument that the Carrier improperly dismissed the Claimant for misuse of company-provided lodging. The Organization contends that the Carrier's designation of Marysville as the site of Claimant's residence and home station was incorrect, because the Claimant had last resided in Post Falls, Idaho, and had never actually lived at the Marysville address on file with the Carrier. The Organization further contends that the Claimant was force-assigned to the Everett position because he (incorrectly) believed that accepting the Oregon mobile crew position would cause him to lose seniority. The Organization also contends that the Claimant did not understand changes that had been made to various Rules while he was on medical leave, including those regarding company-provided lodging. Finally, the Organization

contends that Driscoll did not tell the Claimant that he could not use corporate lodging.

Based on a review of the record in the instant case, the Board finds the Organization's assertions to be without merit.

The Board finds that the Carrier properly considered the Claimant's residence and home station to be located in Marysville. It was the Claimant's responsibility to ensure that the address on file with the Carrier was accurate. Moreover, it is apparent on the record that the Claimant also considered Marysville to be his residence and home station, not Post Falls, Idaho. Gilliam testified that when he spoke with the Claimant, the Claimant told him that he knew he was using corporate lodging at his headquarters point. Testifying at the Hearing on his own behalf, the Claimant stated that he had told the Manpower Office that he wanted a position on a mobile crew because he needed corporate lodging. He also stated that he nevertheless chose the Everett position in order to be near his children.

Moreover, the Board finds that the Claimant was not force-assigned to the Everett position as required for eligibility for corporate lodging. The definition of "force-assigned" as agreed to by the parties is precisely the opposite of the Claimant's situation. An employee who is force-assigned is one "[w]ho, in the exercise of seniority, cannot acquire a headquartered position within 75 highway miles of his 'Home Station' or residence. . . ." (Emphasis added.) The Claimant's problems arose because he did exercise seniority to acquire a headquartered position within 75 miles of home. As an employee not force-assigned to his position, the Claimant was not eligible for company-provided lodging.

Furthermore, the Board finds that in calling IML, making arrangements for a room in the Everett Howard Johnson, and using that room for 12 days, the Claimant acted contrary to his supervisor's directive. Driscoll testified consistently that when the Claimant asked if he could use company-provided lodging, Driscoll told him, "No, I do not think you are eligible." The Claimant also testified that Driscoll told him, "No, I do not think you are eligible for the corporate lodging benefits because of your address," although the Claimant alleges Driscoll told him to make some phone calls to see what he could find out. Gilliam testified that the Claimant told him on May 10 that Driscoll had told the Claimant that he would not

be allowed to stay at the hotel based on current Agreements. The Claimant knew that he had not been authorized to use corporate lodging. By all accounts, Driscoll had told him "No." Even if, as the Organization asserts, the Claimant had been somehow confused about the corporate lodging Rules and thought he was eligible, his conduct would not be excused because he did not comply with his supervisor's directive.

The Board finds on the record, however, that the Claimant was not confused about the Rules regarding eligibility for company-provided lodging. The Claimant admitted at the Hearing that he had received the Rules and read them before approaching Driscoll with his request for corporate lodging. The Claimant demonstrated his understanding of the eligibility Rules when he told the Manpower Office that he wanted a mobile crew position so that he could use company lodging. In addition, Driscoll informed the Claimant that he was not eligible. The evidence of record demonstrates that, knowing that he was not eligible and having been told by Driscoll that he could not use corporate lodgings, the Claimant nevertheless took it upon himself to arrange for a room at the Everett Howard Johnson and stay there for 12 days. The Board finds that such conduct was dishonest and insubordinate, and dismissal was warranted.

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 July 2005.