

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41881
Docket No. MW-41939
14-3-NRAB-00003-120255**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. P. Webster by letter dated April 18, 2011 for alleged violation of EI 21.1 Lodging Procedures (General), EI 21.4, EI 21.6, EI 21.6.1, EI 21.6.2 and MOWOR 1.6 Conduct in connection with charges of dishonest conduct and violation of the corporate lodging policies at CLC facilities in Olive Branch, Mississippi, [on] February 18, 26 and 27, 2011 and in Springfield, Missouri, on February 18, 19 and 20, 2011 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-11-D070-9/10-11-0332 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above Claimant P. Webster shall now receive the remedy prescribed by the parties in Rule 40G.”**

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 Carrier asserted that the Claimant, who was a Machine Operator, was alleged to have used a corporate CLC Lodging Card during February 2011, at a Company-provided lodging facility in an inappropriate manner, and because of that, charges were brought against the Claimant.

On March 16, the Carrier directed the Claimant to report for a formal Investigation on March 23, which was mutually postponed until March 31, 2011, concerning, in pertinent part, the following charge:

“ . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged dishonest conduct as a BNSF employee when you violated the corporate lodging policy when you stayed at the Super 8 in Olive Branch, MS, February 18th, 26th and 27th, 2011, and when you stayed at the Baymont Inn and Suites, in Springfield, MO, February 18th through the 20th, 2011 while assigned as a group 3/4 machine operator on gang TUCX0004.”

On April 18, 2011, the Claimant was notified that he had been found guilty as charged and was dismissed.

The Board notes that this is the second of two discipline cases involving the same Claimant before this tribunal.

For the sake of brevity, the parties' skillful arguments will not be reiterated because they are identical to those set forth in Third Division Award 41880. Suffice to say that those arguments are incorporated herein by reference. However, the

question of the Claimant's alleged guilt has become academic because in Award 41880 the Board found that the Carrier's decision to dismiss the Claimant was appropriate. Therefore, the Board finds and holds that his dismissal in the aforementioned Award cannot be overridden and the issue raised in the instant case is now moot; accordingly, the instant claim must be dismissed. That being said, we note for the record that our review of the transcript and record evidence substantiated that the Carrier met its burden of proof that the Claimant was guilty as charged.

AWARD

Claim dismissed.

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 16th day of 2014.