

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42357  
Docket No. MW-42336  
16-3-NRAB-00003-130299**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
( 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. S. Robles by letter dated June 27, 2012 for alleged violation of MOWOR 1.6 Conduct – Dishonesty in connection with alleged dishonesty in arranging of corporate lodging on April 12 and April 15, 2012 while working on the Pikes Peak Subdivision while assigned as foreman on TP44 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File C-12-D070- 14/10-12-0508 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Robles 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 Claimant was accused of violating MOWOR 1.6 Conduct by way of alleged dishonesty in arranging for corporate lodging on April 12 and 15, 2012. At the time he was assigned as foreman and was working on the Pikes' Peak Subdivision. He had been lodging in Denver, but Assistant Director Maintenance Production Myers instructed him to move to the closer location of Castle Rock. Accordingly, he contacted Corporate Lodging Consultants (CLC) and made reservations, but later told his supervisor, Roadmaster Fry that CLC cancelled the reservations and moved his gang to Englewood, CO. Fry told the Claimant to have CLC contact him about the cancellation. When Meyers noticed the Claimant's gang had reported overtime for Sunday, he contacted Fry then the Claimant. The Claimant told Meyers that the overtime was because CLC inexplicably cancelled the lodging in Castle Rock, meaning the gang had to travel a longer distance. Meyers contacted CLC who denied canceling the reservation and stated the Claimant did. On Sunday April 15, the Claimant asked CLC to get back the lodging in Castle Rock but they were unable to do so. At the time of this incident, the Claimant was under a review period for a prior Level S violation from violation of BNSF's Corporate Lodging Policy.

It is the Carrier's position that only Meyers or Fry had the authority to change lodging from Castle Rock, and neither authorized such a change. The Claimant told CLC there was a "change of plans" when there was none. The Organization asserted the gang was double booked at Castle Rock but there was no evidence to back up this assertion. The Claimant told Fry that CLC cancelled his reservations, but it was the Claimant who did this. He was dishonest in that he did not tell the truth.

The Organization argues the Carrier is alleging moral turpitude, meaning a higher burden of proof applies. It is not the Claimant's burden to prove his innocence. Mr. Carabajal and Gutierrez both testified that on Friday April 13, 2012, they understood that they would be staying at the Best Western Motel in Castle Rock when they returned on April 15. CLC makes mistakes with room reservations. Meyers testified that he did not know what the Claimant did that was dishonest. When the Claimant cancelled the reservations in Castle Rock, he did not make any reservations in Englewood. This supports the view that there was a

duplicate reservation. The Carrier did not remove the overtime from the employee's pay. A testimonial deadlock with no corroboration is inadequate to sustain the Carrier's burden of proof.

The Carrier's burden of proof is substantial evidence; particular facts in different cases do not alter this. The Carrier had substantial evidence that it was the Claimant, and not CLC, who cancelled the reservations. Upon inquiry, Shawn Montgomery of CLC emailed BNSF stating as follows:

"Mr. Robles called on 4/11 we booked him at the Castle Rock Super 8. He called back on the 12<sup>th</sup> and canceled and said he was moving his reservation to another city.

He called back on 4/15 to request the same city that he had cancelled earlier, we booked him in Englewood.

He called back 30 minutes later to cancel that one as he wanted the Super 8 again, the Super 8 did not have non-smoking rooms so we were unable to book them. Both the last calls were on the 15<sup>th</sup>."

A transcript of the conversation reads as follows in pertinent part:

"Lori: Hi. This is Lori with Corporate Lodging and I have . . . we have booked your single and two doubles to check in on April 15<sup>th</sup> and leave the 20<sup>th</sup> of April and those are at the Super 8 Motel in Castle Rock, Colorado.

Sergio Robles: OK. Uh . . . well, a change, there has been a change of plans now.

Lori: OK, and for the whole date?

Sergio Robles: Yeah, we're going to have to cancel them and we're going to probably . . . we're going to end up booking them I think in Denver now."

This evidence comes from a neutral third party and therefore is not susceptible to claims of bias or falsification. It establishes that the Claimant was the individual who cancelled the reservation. He represented to CLC that his gang was

being moved to Denver when this was not true. The transcript of the conversation with CLC does not harmonize with any perception that there was a duplicate reservation. The Claimant and his gang benefitted by gaining overtime that otherwise would not have been earned. This constitutes substantial evidence in support of the Carrier's conclusion that the Claimant violated MOWOR 1.6 Conduct.

**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 30th day of August 2016.