

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7426
AWARD NO. 15 (Case No. 15)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

UNION PACIFIC RAILROAD COMPANY (SPWL)

William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: July 20, 2011

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The dismissal of Welder T. Rodriguez for violation of Rule 1.6 of the General Code of Operating Rules in connection with the unauthorized use of the Corporate Lodging Card (CLC) for multiple hotel stays resulting in theft of company money which was paid for the balance of these stays is unjust, unwarranted and in violation of the Agreement (System File L-1045S-452/1531507).**
- 2. As a consequence of Part 1 above, we respectfully request that Mr. Rodriguez be reinstated to the service of the Carrier on his former position with seniority and all other rights restored unimpaired, compensated for all wage and benefit loss suffered by him since his removal from service and the alleged charges be expunged from his record."**

FINDINGS:

Public Law Board No. 7426, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On October 30, 2009, Carrier notified Claimant to appear for a formal Investigation on November 17, 2009, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that while employed as Welder, on Gang 8663, at Fresno, California, you allegedly failed to receive authorization for use of your Corporate Lodging Card for multiple hotel stays, resulting in theft of company money which was paid for the balance of these stays.

These allegations, if substantiated, would constitute a violation of Rule 1.6, as contained in the General Code of Operating Rules, effective April 3, 2005...."

On December 3, 2009, Claimant was notified that he had been found guilty as charged and was assessed a Level 5 dismissal.

It is the position of the Organization that the record reveals that Claimant testified honestly and openly about the incidences surrounding the alleged improper use of his assigned Corporate Card. It noted that the Claimant offered to repay the Carrier any monies deemed to be improperly spent by him for the use of the corporate card for hotel stays. The Claimant testified that he was in a financial position that would have caused him to be homeless. He was, at the time he received the letter of charge, just recovering from a huge financial crisis and about to get back on his financial feet. The Claimant was further burdened by the fact that his wife was in need of medical care and rest and to have been homeless at that time would not have allowed his spouse to recover. It further argued that the Claimant and his spouse, had no family to rely on for help and, as such, had nowhere to turn. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the Carrier's position that this is a case of Claimant being found guilty of being dishonest when he failed to receive authorization for use of his Corporate Lodging Card for multiple hotel stays not related to work, resulting in theft of company money. It argued that stealing from the company is a serious and flagrant violation of Rule 1.6 which Claimant admitted to during the Hearing. It further argued that Claimant's admission of guilt does not remove the fact he lost the trust of the Carrier and it is not obligated to give employees who steal a second chance at employment. It closed by asking that the claim remain denied.

The Board has thoroughly reviewed the transcript and the record of evidence and it is clear that the Claimant admitted he improperly used his Corporate Lodging Card for multiple hotel stays without Carrier permission. In his closing statement the Claimant said the following:

"Yes, I just want to say, Josh, you know, I'm-I'm sorry if I- if I lied and deceived you and problems I caused you. You know, I didn't mean to- just going through some hard time and I'm sorry."

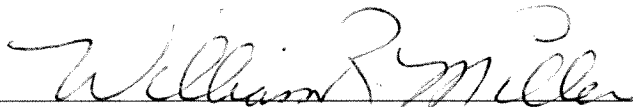
The Board is not unsympathetic to the Claimant's plight as the record reveals that he had been evicted from his residence, his personal vehicle was repossessed, his wages were being garnished and his wife's medical condition depleted them of all cash reserves and his family lived pay check to pay check, but we are not persuaded that he used good judgment as there are many state and federal agencies and charities that could have offered him assistance as opposed to his pre-meditated improper use of his Corporate Lodging Card. Substantial evidence was

adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

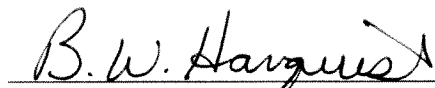
The only issue remaining is whether the discipline assessed was appropriate. At the time of the incident Claimant had five plus years of service who was guilty of a serious infraction of theft. It is a well settled issue in the industry that in cases of discipline where there is no argument as to the guilt of a Claimant, as in this instance wherein he admitted guilt and pleaded for leniency, that leniency is the prerogative of the Carrier and not the Board. The Carrier chose not to extend the Claimant another chance and there is nothing in the Agreement that requires it to do so. The Board finds and holds that the discipline will not be disturbed because it was not excessive, arbitrary or capricious as it was in accordance with the Carrier's UPGRADE Policy and the claim will remain denied.

AWARD

Claim denied.



William R. Miller, Chairman



B. W. Hanquist, Carrier Member



T. W. Kreke, Employee Member

Award Date: Sept 12, 2011