

PUBLIC LAW BOARD NO. 2366

AWARD NO. 44

DOCKET NO. 56

BMW NO. Mi-261-T-81

ICG NO. 1480

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "1) That Mr. R. L. Ware was unjustly dismissed from the service of the Illinois Central Gulf Railroad.
- 2) That the Illinois Central Gulf Railroad reinstate Mr. Ware with all rights unimpaired and paid for each day until he is returned to work."

OPINION OF BOARD

On September 1, 1981 the Claimant was advised to attend a formal Investigation concerning his alleged use of the Carrier's credit without proper authority by using a hotel room and allegedly advising the motel to bill the Carrier for charges over and above six dollars and ten cents (\$6.10).

Subsequent to the Investigation the Claimant was dismissed from service.

The Carrier has set forth the basic concepts of an agreement dealing with providing hotel accommodations and the billing therefor. On the days in question the Claimant was a Gang Foreman assigned to a certain project during which time the Claimant and his gang were lodged at a motel in Shreveport, Louisiana. Under the arrangements made the Claimant was to pay three dollars and five cents (\$3.05) for each night's lodging and the motel would bill the Company for the remaining amounts due.

On the morning of Friday, August 7, 1981 the Claimant checked out of the motel with the remainder of the employees because the work was completed. But, the Claimant returned to the motel at about 12:30 p.m. and again checked in. He paid six dollars and ten cents (\$6.10) to the motel and instructed the motel to bill the Company for the remaining amount due. According to the Carrier he stayed at the motel on the Friday night in question and checked out on Saturday morning. This was done, according to the Carrier, on the Claimant's own whim because he had not been instructed to remain at the motel nor had the project been extended.

The Claimant testified that the "timeroll" went in that week and he was up all night attempting to get the time correctly registered to the point that he did not check out of the motel. However he became aware that someone else had signed him out and that he still had the key in his possession when he was advised that he had been signed out.

Further he testified that he signed back in because "...all my clothes and belongings were in the room. We were supposed to get off early that day because we were late every evening, swapped time, but when I came back over I found out he had checked me out, I never did check out 'cause I had my key in my pocket. This is the reason I checked back in, it was my understanding that after 12:00 was check-out time and I would have to pay another day. I did not spend Friday night there, I stayed 'til 2:30 or 3:00...Got my clothes in my truck, went by the office and turned the key in and left together and I stopped at Minden that night..."

The Carrier argues that the record shows that there was absolutely no reason for the Claimant to work on the evening in question and further the Carrier insists that the record shows that this Claimant specifically returned to the motel and checked back in on the 7th of August at twenty-two (22) minutes past noon.

The Carrier presented the Manager of the motel at the hearing and she gave testimony which further contradicted that of the Claimant and in fact she testified that he did, in fact, stay overnight and departed on the 8th. Further she denied that he was merely going back into a prior assigned room but in fact she registered him and gave him a new key.

Obviously this dispute presents a question of credibility. We have ruled on numerous occasions that a Board such as this is not constituted to make credibility determinations but rather is limited to a review of the record to ascertain if there is sufficient evidence of record upon which the Carrier

based its conclusions.

There are a number of items raised in this dispute which do not admit of easy solution; not the least of which being the Grievant's stated reason for checking back into the motel. If an individual merely desired to obtain his clothing from the motel clearly he would have attempted to do so without a need to check in again; nor can we reasonably imagine that a motel would attempt to require someone who raised the issue to re-register for a full day in order to retrieve clothing when there is no information to indicate that the clothing was being held as a lien against charges, etc. Accordingly, we find no basis for disturbing the findings of the Company in this regard and we will deny the claim.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.