PUBLIC LAW BOARD 2366

Illinois Central Gulf Railroad	:	
	:	Award No. ~~182~~ 18
v.	:	Docket No. 102
	:	
Brotherhood of Maintenance of Way Employes	:	
	:	

STATEMENT OF CLAIM

1. The company violated the agreement when it dismissed D. R. Bird on August 9, 1985, for charging lodging bills to the company's credit for which he was not entitled on June 6 and 9, 1985.

2. The company should now be required to reinstate the claimant with all seniority unimpaired and to pay him for each day of work he has missed.

OPINION OF THE BOARD

Rule 36 of the Agreement requires the Company to make reasonable effort to provide suitable lodging following each work day, except for the last day of the work week for Employees who do not commute to and from their residence and who live more than forty-five (45) miles from the point where the gang completes work. In addition, certain lodging benefits are mandated for the evening prior to the first day of the work week if, among other things, the point where the gang begins work on the first work day of the work week is two hundred (200) miles or more from the Employees residence.

The same rule provides that attempts to defraud the Company of monies under the rule, or to engage in "sharp practice for the benefit of himself or others," or to falsely claim benefits is considered a serious violation of the rules and subjects the offender to permanent dismissal. In addition, certain other rules speak to the general question of dishonesty, false reports, etc.

The Claimant had listed as his residence Pinckneyville, Illinois which is approximately sixty (60) miles from Belleville, Illinois where the gang stayed in a motel. There is no question that the Claimant was entitled to lodgings under the rule on Thursday, June 6, 1985, if said day was a "work day." On that Thursday, the Claimant reported late to work and was sent away. Nonetheless, he charged the lodging expense

for his room that night to the Company's credit. The Carrier disputes the propriety of that action because, in this particular case, concerning this particular Employee, June 6 did not follow a "work day" for him.

On Sunday, June 9, 1985, the Claimant returned to a trip from West Virginia, and that trip consisted of more than two hundred (200) miles. He proceeded to the hotel and charged his motel room to the Company's credit. The Company asserts a violation since the Claimant's residence is only sixty (60) miles from the point of the lodging and the fact that the Employee drove in excess of two hundred (200) miles is totally immaterial since he did not proceed from his residence.

The basic facts as stated above are not in dispute, however, the assertion that the Employee conceded wrongdoing is not agreed to. For instance, the Employee asserts that June 6 was intended to be a work day and was scheduled as such even though he did not work. He contends that he did not knowingly do wrong.

The Board reads this dispute as being two separate conflicts. Unquestionably the Agreement intends that the individuals receive lodging benefits when they are working certain distances from their homes and the Agreement uses the term "work days" to establish entitlement to reimbursement. Our chore is to define "work day" in the context of the Agreement before us.

Certainly, a "work day" (in the normal sense of the word) is a day when the Employee is scheduled to work. The fact that he did not do so here results from the fact that he was late for work and was then sent home. Unquestionably, the Board can foresee certain circumstances where it would be totally unreasonable for the Employee to submit a claim when he did not perform work on a scheduled "work day" because "sharp practices" would be reasonably inferred. At the same time, we can foresee circumstances of short duration illness where it would be entirely proper, in our view, to submit a claim for reimbursement even though the Employee did not specifically work on the day. Once again, we are reluctant to establish an all encompassing rule to be applied

in each individual case. We will give the Claimant the benefit of the doubt in this particular instance since the Company does have the burden of establishing the case against the Employee. However, we caution this, and other Employees that each individual set of circumstances must be viewed whenever a dispute arises in this context.

We have no hesitancy, however, in upholding the Carrier's contentions concerning the following Sunday evening. The Employee had listed his residence as Pinckneyville, Illinois on various records and in fact used that address when checking in. The fact that he may have been moving from place to place and residing in different areas may have been of temporary convenience to him but the Carrier need not tolerate a circumstance where the Employee can change his residence at will in order to take advantage of contractual provisions. The Employee was bound by the desination of Pinckneyville until changed in a more formalized manner and accordingly, he was not entitled to the reimbursement for June 9.

It now becomes our obligation to review the severity of the disciplinary action. While certainly we feel that there was wrongdoing concerning the ninth, and the Employee's actions clearly constituted a negligence and a disregard for proper procedures, it is arguable as to whether or not there was a clear showing of a deliberate dishonesty. In addition, we have sustained the claim concerning June 6. Under those circumstances, we feel it appropriate to set aside the termination and reinstate the Employee to service, but without back pay.

We are compelled to state that the Employee's prior record did not make the conclusion any easier to reach and this Employee should be aware that he is dangerously close to taking action which will result in a permanent separation from service.

We are also compelled to warn this Employee and other Employees that nothing contained in this Award should be construed as suggesting that the Board tolerates any deliberate dishonesty in this area. We are confident that the Carrier will continue to treat the types of violations asserted herein as violations which should be dealt with harshly.

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.

AWARD

1. Claim sustained in part and denied in part to the termination is set aside and the Claimant is restored to service with retention of seniority and other benefits but without reimbursement for compensation lost during the period of the suspension.

2. Carrier shall comply with this Award within thirty (30) days of the effective date.

Joseph A. Sickles
Chairman and Neutral Member

J. S. Gibbins
Carrier Member

Hugh Harper
Organization Member

8/27/86
Date