

PUBLIC LAW BOARD NO. 4244

**Award No. 205
Case No. 210**

Parties to Dispute: (**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYEES**
(
(
(
(**-and-**
(
(
(**BURLINGTON NORTHERN SANTA FE RAILWAY**
(
(

Statement of Claim: Claim on behalf of Central Region Trackman B. Attakai, Jr.
(Employment Date 4-18-94) for reinstatement with seniority,
vacation, all benefit rights restored, and pay for all wage loss
and or made whole beginning March 15, 1996, and continuing.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

The claimant, trackman Billy Attakai, Jr., was notified of a formal investigation into the following charges: 1) his unauthorized use of a corporate lodging card to purchase hotel rooms at Kingman, Arizona on February 29, March 3 and March 10, 1996; 2) providing a roadmaster with dishonest information concerning his possession of the corporate lodging card; and 3) insubordination in refusing to follow instructions to surrender the corporate lodging card on March 12 and 13, 1996. A formal investigation into the charges was conducted on March 28, 1996. The claimant was found guilty of each charge, and on April 19, 1996, he was issued a Level 6 dismissal from service for violation of Rules 1.1, 1.6 and 1.13 of the Safety Rules and General Responsibilities for All Employees, effective January 31, 1996; and Rules 89.11.1, 89.11.2, and 89.11.4 (A)(a) of the Chief Engineer's instructions, revised October 27, 1995.

The claimant was assigned to the Yucca section as a trackman. On March 11, 1996, roadmaster Steve Marino received information as the result of an audit which indicated that the claimant had stayed at a Holiday Inn in Kingman, Arizona on February 29, March 3 and March 10, 1996. A corporate lodging card was used to secure payment of the room. It was undisputed that as a trackman assigned to the Yucca section, claimant was not entitled to corporate lodging. Rather, a section crew is provided free lodging seven days per week.

Only two days prior to claimant's first night at the Holiday Inn on February 29, a meeting was held on the subdivision by trainmaster Marino to explain the Arizona

Division Corporate Lodging Card Policy. The claimant signed a receipt for a copy of the policy which indicated he understood and agreed to follow the policy. He also signed a roster sheet indicating his attendance at the meeting of the track department when the policy on corporate lodging was discussed.

On March 12, 1996, the foreman and roadmaster spoke with the claimant and requested that he produce the corporate lodging card, but the claimant stated he left it at home. The roadmaster instructed claimant to bring the corporate lodging card with him to work the following Monday. The roadmaster traveled to Topock, Arizona where he again requested that the claimant hand over his corporate lodging card, and he produced documentation from the Holiday Inn for the claimant to review. At this time, the claimant stated he used his union card to secure his stay at the hotel. When told by the roadmaster that was not possible, the claimant stated his lodging card had broken, and he simply threw it away. On March 14, 1996, the roadmaster notified claimant he would be withheld from service pending an investigation into improper use of the lodging card and his failure to produce it. The claimant then remarked that the card was in Yucca, and it was eventually secured from the section quarters at that location.


These facts, including the testimony of roadmaster Marino, were not contested by the claimant. He explained his use of the corporate lodging card on the basis that he was without money due to his expenses in traveling to his work assignment, including a taxi from the Holiday Inn. While there was an effort to explain away claimant's actions as authorized


for those trackmen who were assigned to a section, the claimant and other members of the track crew were given explicit instructions that trackmen on sections were not permitted to use the corporate lodging card, even if forced to sign on to a section job.


The Board finds the claimant improperly charged his costs of lodging to the Carrier's corporate lodging card contrary to express instructions prohibiting him from doing so as a section trackman. When questioned the claimant attempted to deceive the roadmaster as to his actual use of the card, and then failed to comply with express instructions from the roadmaster to produce the lodging card. Clearly, the Carrier met its burden of proof that the claimant violated General Rules 1.6(3), 1.6(4), and 1.13; and also Chief Engineers Instructions Rule 89.11.1. Such rule violations, which followed by only two days instructions on the corporate lodging policy and its publicized prohibition against the use of the corporate lodging card in this fashion, are most serious. The fact claimant was required to protect his position fails to justify or excuse the misconduct proven here. For these reasons, the claim must be denied.

AWARD

The claim is denied.



Greg Griffin, Carrier Member

Clarence F. Foose, Employee Member

Jonathan I. Klein, Neutral Member

This Award issued the 22 day of April, 1997.