

PUBLIC LAW BOARD NO. 4244

Award No. 230

Case No. 238

Carrier File No. MW980709AA

Organization File No. 150-13D2-982.CLM

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

Parties to Dispute:

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on June 1, 1998, the Carrier dismissed Mr. C. D. Sinclair for alleged violation of Rules S-28.6 and S-28.7 of the Safety Rules and General Responsibilities for All Employees, effective March 1, 1997 and BNSF Engineering Instruction 21.5.2, dated January 2, 1998, in connection with his alleged improper use of Company provided lodging on Friday, February 27, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be removed from his record.

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

During the week of February 23 through 27, 1998, the claimant, machine operator C. D. Sinclair, was assigned to extra gang 27453 headquartered in Mountainair, New Mexico. The claimant's home station is located in Belen, New Mexico, which is approximately 44 miles from Mountainair. The claimant is permitted to utilize corporate lodging because the distance between the claimant's home station and his headquarter point is over the thirty (30) mile requirement set forth by the Carrier.

During the work week at issue, the claimant did not utilize corporate lodging. Instead, the claimant choose to drive home each evening to his residence. However, the Carrier alleges that on Friday, February 27, 1998, the claimant checked into the Travel Lodge Motel in Albuquerque, New Mexico. According to the Carrier, corporate lodging policy does not permit employees to stay in lodging on the evening of the last day of the work week unless service is to be performed on the next day during the employee's scheduled rest day.

The claimant was notified by the Carrier to attend a formal investigation to determine his responsibility, if any, for allegedly violating Rules S-28.6 and S-28.24 of the Safety Rules

and General Responsibilities for All Employees and BNSF Engineering Instruction 21.5.2, concerning the improper use of Company provided lodging on Friday, February 27, 1998. As a result of the formal investigation held on May 8, 1998, the claimant was dismissed by the Carrier for violating the above listed rules and instructions. The Board cannot uphold this dismissal for the following reasons.

The following rules are applicable to the Board's decision in this case. Rule S-28.6 of the Safety Rules and General Responsibilities for All Employees provides: "Employees must not be: careless of the safety of themselves or others; negligent; insubordinate; dishonest; immoral; quarrelsome; or discourteous." Rule S-28.24 of the Safety Rules and General Responsibilities for All Employees provides, as follows:

Unless specifically authorized, employees must not use the railroad's credit and must not receive or pay out money on the railroad's account. Employees must not sell, or in any way get rid of, railroad property without proper authority. Employees must care for all articles of value found on railroad property and promptly report the articles to the proper authority.

Engineering Instruction 21.5.2, titled "Using Check Inn Cards," provides:

Qualified employees using a Check Inn Card must do the following:

1. Use the Check Inn card only for lodging expenses on the dates service is performed and/or the night immediately preceding the start of the work week. (Emphasis supplied).
2. Before departure, pay for expenses incurred for food, phone, etc., in a manner satisfactory to hotel management.

3. Unless you report a card lost or stolen, you must pay for charges in case of unauthorized use. Check Inn cards are authorized for use only by the employees whose name and identification number are embossed on the card.

4. Present the Check Inn card to the lodging facility when checking in.

5. Sign the registration card voucher at the registration desk when checking in.

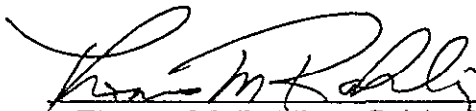
CLC has provided the hotels with a form on which employees' Check Inn cards will be imprinted. Each employee must sign in at the registration desk. Each employee must check out when departing to verify the length of the stay.

The claimant testified that he did not stay at the Travel Lodge motel on Friday, February 27, 1998. In support of his contention, the claimant testified at the investigation hearing that the signature on the corporate lodging card was not his and that it was noticeably distinguishable from his signature. The Board finds that it is not necessary to address the issue regarding the authenticity of the claimant's signature because the claimant was entitled to utilize corporate lodging on the date at issue in accordance with the express terms of the applicable engineering instruction.

The evidence reveals that the claimant performed service on Friday, February 27, 1998. Engineering Instruction 21.5.2 provides, in part: "Use the Check Inn card only for lodging expenses on the dates service is performed and/or the night immediately preceding the start of the work week." Since the claimant was entitled to utilize corporate lodging on the evening at issue because he performed service on that date in accordance with the instruction, the Board must sustain the claim.

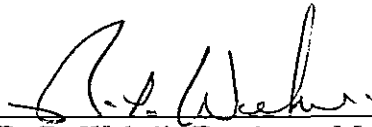
AWARD

The claim is sustained. The Carrier shall comply with this Award within thirty (30) days from the date of issuance.

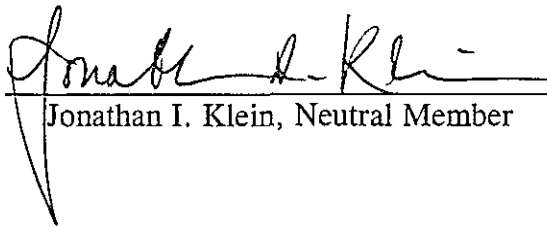


Thomas M. Rohling, Carrier Member

I dissent



R. B. Wehrli, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 18th day of December, 1998.