

PUBLIC LAW BOARD NO. 4340
Joseph Lazar, Referee

AWARD NO. 20
CASE NO. 20

PARTIES
TO
DISPUTE;

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
BURLINGTON NORTHERN RAILROAD

STATEMENT
OF CLAIM;

"Claim in behalf of Machine Operator E. E. Gladney that he be reinstated to service, paid for all time lost and that the charges be removed from his service record as a result of his dismissal August 7, 1989."

FINDINGS; The Board finds upon evidence of record that the parties are Carrier and Employee under the Railway Labor Act of 1934 and amendments thereto, that pursuant to Agreement of the parties the Board has jurisdiction over the parties and the subject-matter, and that oral hearing has been duly waived by all the parties, including claimant.

Claimant Machine Operator E. E. Gladney was informed by the Carrier on September 5, 1989 as follows:

"This is to advise that as the result of the investigation conducted on August 29, 1989, your dismissal from service by Roadmaster M. J. Brown on August 7, 1989, is upheld.

The investigation clearly showed violation of Rules 530, 530(A), and 530(B) of the Burlington Northern Rules of the Maintenance of Way in that you charged out lodging expenses you did not incur from December, 1987 through December, 1988."

Rule 530:

'RELIEF FROM SERVICE; Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will.";

RULE 530 (A):

"FACTUAL REPORT OF INFORMATION; Employees who withhold information or fail to give factual report of any irregularity, accident or violation of rules, will not be retained in the service."

RULE 530 (B):

"THEFT OR PILFERAGE; Theft or pilferage shall be considered sufficient cause for dismissal from railroad service."

There is no dispute over the facts of record leading to the dismissal of Claimant. Claimant admitted, in response to the question, "Did you stay at the Mineral Wells Motel December 1987 through December 1988?" that "No, I didn't." In response to the question, "Did you turn in, or report expense accounts for that period of time stating that you did stay at that motel?", Claimant stated: "Yes, I did." (Tr., p. 28).

The record shows monthly expense account forms with receipts from the Mineral Wells Motel attached submitted by Claimant, and it is admitted by Claimant that each of the receipts was invalid as he did not incur the expenses; The motel receipts showed date, room number, amount, and fictitious room clerk initials.

Claimant had been staying in his mobile home at the Briarwood Stables from December, 1987 until his dismissal, and he had included receipts for storage and facilities, at that location, in his expense forms. He had also included, but without identifying the charge and amount; his monthly payments for the mobile home and some additional items.

The evidence of record clearly shows that Claimant submitted false lodging receipts from the Mineral Wells Motel when in fact he resided in a motor home at the Briarwood Stables.

Claimant argues that he did not know he was doing anything wrong in submitting the falsified receipts since he was just getting back money he had actually expended. The Board cannot accept this contention. What took place was not a single technical rules violation by an employee who may have incorrectly understood the procedures for reimbursement of expenses. Claimant repeatedly, month after month, submitted falsified receipts and these receipts were falsified by showing false room numbers, false amounts, falsified dates, and initials of fictitious room clerk. Claimant intended to falsify, and his objective was

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realized.

Claimant had a good relationship with his roadmasters and he should have discussed the matter with them if he really did not understand how to claim expenses. Claimant did not have authorization, expressly or by implication, to do what he did. The Board is not persuaded that Claimant did not claim more than he was entitled to in order to meet his actual expenses.

The record shows substantial probative evidence in support of the Carrier's determination to dismiss the Claimant for violation of Rules 430, 430(A), and 430(B) of the Burlington Northern Rules of the Maintenance of Way. The Board notes that Claimant has a twenty-year service record that is clean, that he has a reputation for being a competent worker, that his superiors speak well of him in the transcript, that his fellow employees have petitioned the Carrier to reinstate him, and that the Claimant's age is not that of a young man. The Board, however, is confronted with clear evidence of a grave violation of rules. There is a settled principle established by adjustment board awards that the boards do not grant pleas for leniency or compassion, but deal with discipline cases on the bases of rights of the employee not to be unfairly disciplined. If leniency or compassion is to be granted in this case, as a matter of grace, this is for the management and not for the Board.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

Dated: August 16, 1990.