PUBLIC LAW BOARD NO 5850

Award No.
Case No. 107

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Southern, Burnis D. Magee from service was unjust.

2. That the Carrier now reinstate Claimant Magee with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m. February 2, 1999 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant commenced service October 6, 1997, as a laborer. He was furloughed in September, 1998, and recalled in January, 1999.

In December, 1998, the Supervisor of Manpower was advised that Claimant had been using his corporate lodging card during his furlough.

He was charged with the alleged violation of several rules, and after the investigation, based upon the evidence brought forth in the investigation, the Carrier dismissed Claimant

from all services.

Claimant contends he used the corporate lodging card during his furlough as he had no other place to stay, and that he was unaware that such use was in violation of any instructions and/or policy, but he never asked. He had the card and the card would provide lodging for him.

It is naive for Claimant to believe that the corporate lodging card issued by the Carrier to provide a room when working on line was also to provide lodging for days not worked.

Claimant used the card fraudulently. He committed theft, and theft is punishable by dismissal. The Board finds no mitigating circumstances that would permit it to alter the discipline. The discipline will be upheld.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: May 8, 1999