PUBLIC LAW BOARD NO 5850

Award No.
Case No. 139

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the current Agreement when dismissing Mr. G. Lyles from service for his alleged violation of Maintenance of Way Operating Rule 1.6, number 4 and Rule 1.13; and Maintenance of Way Safety Rule S-1.2.5 for allegedly being dishonest on claims of weekend travel allowance and failure to comply with instructions and policies governing weekend travel allowance and corporate lodging on June 11, 12 and 13, 1999.

2. As a consequence of the Carrier's violation referred to above, Mr. Lyles shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

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.

The facts leading to Claimant's dismissal have been set forth in Case 138. What follows is the Board's findings relative to the dismissal of the Claimant identified in the Statement of Claim.

The Roadmaster testified at the investigation as follows:

"A. Gabe Lyles came up to me about 9:00, the morning of the 15th, and asked if there was a problem with the Corporate Lodging. And we talked a few minutes asking, you know, what he meant, what he'd heard. And he just said he'd heard that there was some kind of problem, and in the course of the conversation, it came out about what time he checked out and, on Saturday morning and what time he checked in Sunday night, and I said, well, that was, you know, they were driving pretty fast, and he said he drove fast. And at the end of the conversation, he said, well, you both, you and I both know I didn't make the trip."

After confessing to the Roadmaster that he did not go home, it must have dawned on Claimant that he was in jeopardy of losing his job as he set out to counter his confession with what he believes is evidence that he did indeed go home.

Claimant presented two slips from a gas station showing gas was bought at Boron, California, several hundred miles from his home on June 12 & June 13. Claimant also furnished a bill from a car shop dated June 13 charging for an oil change and a minor tune up. The Carrier, in the on-property handling, stated they called this auto repair shop and were told this shop was never open on Sundays.

Claimant also furnished a statement from a member of the motel's housekeeping staff stating that Claimant's room was cleaned at 9:00 AM on June 12, 1999, and that everything was out of the room.

The gas receipts do not have Claimant's name thereon, and are thus inconclusive as to Claimant's contention that he did travel home. Likewise, the chambermaid's statement that Claimant was out of the room when it was cleaned at

9:00 AM on June 12, is inconclusive. Many times people vacate their rooms but may not surrender the room until a later time.

In addition, the Special Agent who investigated this matter, presented Claimant's picture to a member of the Ramada Inn's staff who identified Claimant as being in the motel at 3:30 PM, June 12, 1999.

The Carrier also, in the on-property handling of this dispute, prepared a mileage chart to show what speed Claimant had to travel using various check out times on June 12, the time Claimant alleged he arrived home and the time he returned to the motel, using first the mileage Claimant requested pay for and the actual mileage as drawn from a computer list.

Pueblo Departure	Fresno arrival	Driving time	Distance on claim	Computed avg.speed	Distance (actual)	Computed avg.speed
10:30 a.m.6/12	2:30 a.m. 6/13	16 hours	1710 miles	107 mph	1249 miles	78 mph
11:37 a.m.6/12	2:30 a.m. 6/13	15 hours	1710 miles	114 mph	1249 miles	83 mph
3:30 p.m. 6/12	2:30 a.m. 6/13	11 hours	1710 miles	155 mph	1249 miles	114 mph

*Departure times are based on:
10:30 a.m. —Testimony of Claimant.
11:37 a.m.—Departure time as listed on Ramada Inn statement.
3:30 p.m. —Testimony of Clerk Irene Carrillo

In this Board's opinion, Claimant has not presented evidence that invalidates the Carrier's findings that he did not travel home the weekend of June 11, 12 and 13, 1999.

The Carrier has furnished substantial evidence of Claimant's culpability for the charges assessed. Theft and fraud are serious charges and, if proven, warrant

dismissal.

Pursuant to the facts of this case, this Board finds it has nothing upon which it could base modification of the discipline.

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: June 28, 2000