

**PUBLIC LAW BOARD NO. 5850**

**Award No.  
Case No. 263**

**PARTIES TO DISPUTE:**  
**(Brotherhood of Maintenance of Way Employees  
(The Burlington Northern Santa Fe Railroad (Former  
(ATSF Railway Company)**

**STATEMENT OF CLAIM:**

1. The Carrier violated the Agreement on April 14, 2004, when dismissed the Claimant, Mr. T. J. Scott for allegedly defrauding the Carrier by charging a motel room and food cost to a Carrier lodging card while he was in a furlough status on March 13-16, 2004, in violation of Maintenance of Way Operating Rules 1.8, 1.25, and Engineering Instruction Rules, 21.1.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately return the Claimant to service, remove any mention of this incident from his personal record, and make him whole for any wages lost account of this violation.

**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 Carrier wrote Claimant on March 18, 2004, advising him an investigation was being scheduled to determine his responsibility for the,

"...alleged unauthorized use of (the) BNSF corporate lodging card on March 13, 14, 15 & 16, 2004...while off on force reduction...."

Claimant receipted for the certified notice, but did not show. The investigation was held in his absence.

The choice to be at an investigation to present whatever defense available is Claimant's, but when he is not in attendance, his Representative could do nothing but to insure the investigation was held in accordance with the Rules and in a fair and impartial manner.

The Board concludes that the hearing brought forth overwhelming evidence of Claimant's culpability for the charges assessed.

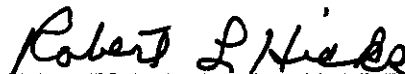
After the investigation was concluded and Claimant was dismissed, he came forth with a plea of identity theft by his then "fiance," but the Carrier thoroughly investigated Claimant's story and found it to be just that, a story.

AWARD

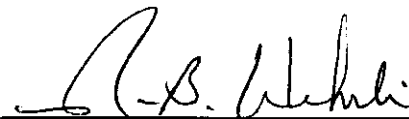
Claim denied.

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



William L. Yeck, Carrier Member

Dated:

Nov 5, 2004