

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 315**

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 when Claimant, S. B. Sonny, was assessed a 10-day record suspension on June 7, 2006 for alleged violation of Maintenance of Way Operating Rules 1.6-Conduct and 1.9-Respect for Company Property for inappropriate behavior while lodged in Carrier-provided lodging facility in Kirksville, MO while assigned to region/system gang TP-07; and
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately return the Claimant to service with seniority, vacation and all other rights unimpaired, remove any mention of this incident from Claimant's personal record, and make Claimant whole for all time lost commencing June 7, 2006.

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.

After reading the investigation, the Carrier failed to furnish sufficient evidence of Claimant's culpability for the charges assessed.

A large gang of fifty plus employees were staying at a motel. Someone stalked the five women who were sitting in the hotel lobby.

They alleged someone from the gang was responsible for the stalking which

ended when they refused his request to go to his room and for \$20.00 strip for him.

The Carrier, naturally, moved to investigate the complaint. Each lady positively identified a snapshot of Claimant as the man who stalked them and concluded the stalk with an offer of money for a striptease.

Five women put in writing the events that led to this investigation. In Exhibit 3a, the writer stated:

"I was in the process of driving away when I see a person that works at BNSF try to get into Jessica car. I know he works at BNSF because I saw him get off the BNSF big white bus that drop off employees at the end of the work day."

Exhibit 3b contained the following:

"The company employee was walking around in the lobby watching us. We didn't think anything of it at the time. As we were leaving the gas company employee must have followed us out to Jessica's car because as she was letting us into the back (it is a 2 door, and very small) Jessica turned around to tip the seat back into place to get in the car when the company employee approached us. He seemed to have appeared out of nowhere so he had to have followed us out. Amanda at this time was in the back, I was in the passenger seat, and Jessica was caught in the v of the car door and the employee's body. He then asked if we would like to come to his room and strip for him. He offered to pay us. Jessica said we weren't interested at all. At that time he left, Jessica got into the car and we left."

Exhibit 3c stated:

"After Amanda got in the car I looked up and there stood the employee. He stepped forward and asked if we were going home. I answered with yes. He responded with 'I am looking for some girls to do a strip tease for me in my room. I am willing to pay.' I responded with 'we're not interested, not interested at all.'"

In Exhibit 3d was the statement:

"I first notice a man standing in his window of his hotel room that overlooks the lobby. He was staring down at us. When we'll look up at him to where he knew we saw him, he'd look or walked away. Then after a while he came down into the lobby. He was there in lobby, went into the

bar, then back into the lobby. He'd go back and forth. You could see everything that goes on in the lobby from the bar.

He continued to watch us. He walk outside to smoke, come back inside and sit in the chair."

With the aforementioned written statements, coupled with an alleged positive identification of Claimant from a photograph, the Carrier established an investigation:

"...for your alleged inappropriate behavior and conduct when you allegedly offered money for three women to undress, in your room at the BNSF provided lodging facility...."

In reviewing the statements, the letter in Exhibit 3a states:

"I know he works at BNSF because I saw him get off the BNSF big white bus that drop(s) off employees at the end of the work day...."

The statement quoted in part is in doubt before this Board as Claimant stated he never rides the bus. He goes to the worksite and returns via a six passenger van.

In Exhibit 3b, the author stated:

"He asked if we would come to his room and strip for him. He offered to pay us."

This was disputed by Claimant as he had no money and, in fact, wired home for some money so he could go home on his off days.

The Exhibit 3c statement set forth the alleged proposition as set forth in Exhibit 3b, and for the same reason that the statement in 3b was rejected by this Board is that Claimant established that at the time he had no money.

In Exhibit 3d, the author of the statement speaks of Claimant looking down at them from a room on the second floor that had a window looking down at the lobby.

Claimant's room had a window looking down on the rear parking lot. No effort

was made to determine to whom the room was registered.

Also stated in Exhibit 3d, "He walked outside to smoke." Claimant does not smoke.

In summary, Claimant does not ride the bus to and from the worksite, he does not smoke, he was broke on the date of the alleged proposition and his room looks over the back parking lot, not the lobby.

As stated, the Carrier did not furnish sufficient evidence to substantiate that Claimant was culpable for the charges set forth in the investigation. All traces of this incident are to be removed from his record, and if he lost any money because of this incident, he is to be paid.

AWARD


Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: June 30, 2008