

PUBLIC LAW BOARD NO. 5850

Award No. 378
Case No. 378

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 Shelton D. Bitsui (1754498) was dismissed by letter dated December 30, 2008, for violation of BNSF MOWOR Rules 1.6, 1.9 and 1.13 in connection with his alleged violation for failure to pay restitution to Best Western Royal Holiday Inn at Gallup, New Mexico.
2. The dismissal of Claimant is extreme, unwarranted and unjustified and is not supported by the flagrant abuse of any of the Carrier's Rules. The Organization respectfully requests that Mr. Bitsui be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing November 6, 2008, continuing forward and/or otherwise made whole.

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.

There exists no controversy. The charge letter was that Claimant was given 60 days to pay the motel the money due, but he did not. This fact was brought forth in the Investigation.

Claimant had checked into a motel that supplies rooms for any BNSF employee. According to the Carrier's contract with the motel, the rooms of non-Supervisors are

required to occupied by two employees.

Claimant asked for a private room even though reservations had been made on his behalf. Because Claimant did not register as a Carrier employee under the terms of CBA, the room rate was his responsibility. The bill for Claimant from the motel was \$440.83. When Carrier became aware of the situation, Claimant signed a waiver for 60 days to pay the motel bill.

He did not settle the bill according to the terms of his waiver. The Carrier then convened an Investigation of the matter. During the Investigation, Claimant admitted he had not settled the bill within 60 days of the date of the waiver.

"RICHARD BELLEW: Mr. Bitsui, were you given instructions to pay the restitution back to the hotel?
SHELTON D. BITSUI: Yes.
RICHARD BELLEW: Mr. Bitsui, would you, how many days were you give, how much time were you given to pay the payment?
SHELTON D. BITSUI: Sixty days.
RICHARD BELLEW: So you were given instructions to pay a payment within 60 days. Have you paid that payment in full?
SHELTON D. BITSUI: No."

Claimant's employment began on August 20, 2008. This incident is the fourth time he was in violation of the CBA within this short period of time. Pursuant to the Carrier's EPA (Employee Performance Account), two serious Rule violations provide the groundwork leading to a dismissal.

The Carrier's decision to dismiss is within the EPA which covers every employee.

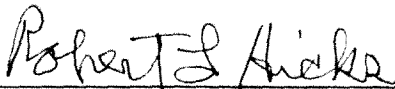
The Board agrees with the Carrier. Claimant failed to abide by the terms of his waiver with Claimant readily admitting his failure to abide by the waiver he signed, the burden of proof criteria had been met.

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



David D. Tanner, For the Employees



Samantha Rogers, For the Carrier

Dated: 2/18/11