

PUBLIC LAW BOARD NO. 2206

AWARD NO. 70

CASE NO. 73

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator, B. E. Evans June 6, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File B-Y-128C)
- (2) Machine Operator B. E. Evans be reinstated to service with all rights unimpaired, his record cleared and paid for all time lost.

OPINION OF BOARD:

In Spring 1979 Claimant was working as a Machine Operator headquartered at Glendive, Montana, but frequently working away from headquarters. As a traveling roadway equipment operator he was entitled under Rule 37 of the BN/BMWE Agreement to certain expenses, as follows:

"When a roadway equipment operator or helper is unable to return to his headquarters point on any night, he shall be allowed actual expenses on bulletined workdays provided he actually performs compensated service on such days.

"If the company does not provide an outfit car for such employees when they are away from their headquarters point, lodging will be provided by the Company or the employees will be reimbursed for the expenses incurred therefor."

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His expense account vouchers for the month of April 1979 came under scrutiny by Assistant B&B Supervisor D. N. Brimble. Upon review several irregularities were detected in his expense account claims. Under date of May 14, 1979 Claimant was called to an investigation to "ascertain the facts and determine your responsibility in connection with your alleged submission of altered motel receipts and claiming lodging on your April, 1979 expense statement in excess of actual expenses incurred". Following the investigation Claimant received notice from termination from service dated June 1, 1979, reading as follows:

A formal investigation was afforded you in Forsyth, Montana on May 21, 1979 in connection with your alleged claiming lodging on your April 1979 Expense Statement in excess of actual expenses and submitting altered motel receipts.

At the investigation you were charged with violation of Rule 661 of the Burlington Northern Safety Rules and facts developed at the investigation established that you were in violation of this rule as charged, when you claimed four nights lodging when you did not stay at a motel and claimed \$14.00 a night instead of \$10.00 a night actual expenses on five days and you submitted altered and falsified receipts to support motel expenses.

For your responsibility in violation of the above mentioned rule, you are hereby dismissed from the service of the Burlington Northern Inc. effective June 4, 1979.

You must relinquish all Burlington Northern property in your possession, including free or reduced transportation.

Acknowledge receipt by affixing your signature in the space provided on copy of this letter.



D. N. Brimble

Assistant Supt. Administration

The matter was appealed and denied at all levels of handling on the property and then placed before this Board.

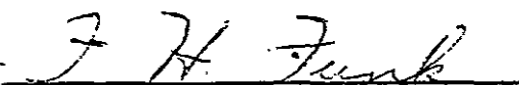
Procedural arguments raised de novo before our Board regarding the timing of the hearing are, in any event, not supported by the record evidence which shows that Carrier officers had not obtained solid information of the occurrence until March 7, 1979. With respect to the merits, the Organization's position on the property is succinctly summarized in the General Chairman's letter of June 2, 1980, as follows:

~~Claimant Evans lost some of his motel receipts and tried to compile his expense account from memory and may have erred in the amount claimed. However, the Transcript does not reveal that this error was an intent to defraud the Company. Therefore, the discipline assessed was unfair and unwarranted and without sufficient cause.~~


We have reviewed carefully the hearing transcript and we cannot say that Carrier is arbitrary or unreasonable in not accepting Claimant's excuses for submitting doctored receipts and padded expense claims. Specifically, the record shows that he claimed lodging on four nights for which no receipts were provided, he claimed \$14 per night instead of the actual \$10 per night on five other occasions, and he altered a receipt for one other night. Carrier apparently rejected the defense of "honest mistake" and we cannot it was unreasonable or incorrect in doing so. See PLB 2206-14. The charged offense of dishonesty was established by substantial probative evidence, there were no fatal procedural defects in the process, and the penalty is not disproportionately severe in this industry for such offenses. We must deny the claim

AWARD

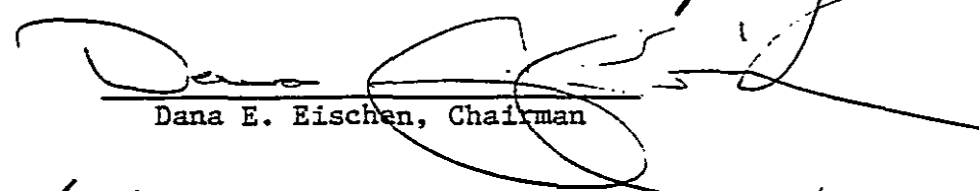
Claim denied.



Employee Member



Carrier Member



Dana E. Eischen, Chairman

Date: November 30, 1982