

**PUBLIC LAW BOARD NO. 4244**

**Award No. 231**

**Case No. 232**

**Carrier File No. MWE971015AA**

**Organization File No. 190-13D2-975.CLM**

**Parties to Dispute:** ( **BROTHERHOOD OF MAINTENANCE**  
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( **-and-**  
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( **BURLINGTON NORTHERN SANTA FE RAILWAY**  
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- Statement of Claim:**
1. The Carrier violated the Agreement when on September 26, 1997, the Carrier dismissed Mr. C. O. Hotchkiss for alleged violation of Rules 1.2.7, 1.3.1, 1.6, 1.19 and 1.25 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged improper use of Company credit card involving long distance phone charges between October 14, 1996 and July 31, 1997.
  2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

**INTRODUCTION**

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45

U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

### **FINDINGS**

Between October 14, 1996, and July 31, 1997, there were a total of ninety-three (93) unauthorized telephone calls charged to a Carrier credit card issued to Jim Ridgeway and Moses Lopez. The amount of the unauthorized telephone calls charged to this Carrier credit card was in excess of \$2,000.00. Some of these telephone calls originated from claimant C. O. Hotchkiss' residence and various locations at which the claimant was on duty.

The claimant was notified by the Carrier to attend an investigation in order to determine the facts and his responsibility, if any, concerning the possible misuse of a Carrier credit card involving long distance telephone charges between October 14, 1996, and July 31, 1997. As a result of the formal investigation held on September 19, 1997, the claimant was dismissed from service by the Carrier for violating Rules 1.2.7, 1.3.1, 1.6, 1.19 and 1.25 of the Maintenance of Way Operating Rules (MWOR). The Board finds that the Carrier has satisfied its burden in this case for the following reasons.

The following rules of the MWOR are applicable to the Board's decision in this case.

Rule 1.2.7 of the MWOR provides: "Employees must not withhold information, or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries or rule violations. Rule 1.6 of the MWOR, entitled "Conduct," provides: "Employees must not be: . . . Dishonest." Rule 1.19 of the MWOR, entitled "Care of Property," provides, as follows: "Employees are responsible for properly using and caring for railroad property. Employees must return the property when the proper authority requests them to do so. Employees must not use railroad property for their personal use."

Rule 1.25 of the MWOR, entitled "Credit or Property," provides:

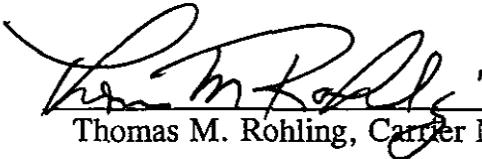
Unless specifically authorized, employees must not receive or pay out money on the railroad account. Employees must not sell or in any way get rid of railroad property without proper authority. Employees must care for all articles of value found on railroad property and promptly report the articles to the proper authority.


At the investigation hearing, the claimant admitted that he intentionally charged the telephone calls in question to the Carrier credit card. The claimant was not authorized to charge these telephone calls. The Board finds that the claimant's acts of dishonesty violated Rule 1.6 of the MWOR. Additionally, the Board finds that the claimant's acts of dishonesty violated Rule 1.19 of the MWOR because he did not properly use and care for Carrier property. The Board further finds that the claimant violated Rule 1.25 of the MWOR because


he was not authorized to pay out (or charge) money on the Carrier's account. Lastly, the Board finds that the claimant violated Rule 1.2.7 of the MWOR because he withheld information from the Carrier regarding his rule violations which occurred during the months that he charged the unauthorized telephone calls at issue to the Carrier's credit card. As a result of the number and nature of the claimant's rule violations in this case, together with the claimant's brief tenure at the time the offenses were committed, the Board finds more than sufficient evidence that the claimant's misconduct warrants his discharge by the Carrier. The claim is denied.

**AWARD**

The claim is denied.

  
Thomas M. Rohling, Carrier Member

  
R. B. Wehrli, Employee Member

  
Jonathan I. Klein, Neutral Member

This Award issued the 19<sup>th</sup> day of March, 1999.