

PUBLIC LAW BOARD NO. 4244

Award No. 240

Case No. 247

Carrier File No. 1499-0057

Organization File No. 240-13D2-992.CLM

Parties to Dispute:

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(**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYES**
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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 February 26, 1999, the Carrier issued a dismissal to Mr. D. Francis, Jr. for the alleged violation of Rules 21.5, 21.5.2, 21.5.3 and 21.6 of the Burlington Northern Santa Fe Engineering Instructions, dated January 2, 1998, in connection with misuse of the Corporate Lodging Card during the period of October 5, 1998 through December 17, 1998, while staying in several different motels in the Phoenix, Arizona area.
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

During various dates in October, November and December 1998, the time period at issue in this case, the claimant, trackman Danny Francis, Jr., was furloughed as a result of a force reduction. The last date on which the claimant worked for the Carrier was August 12, 1998. However, the claimant used a corporate lodging card on the following dates: October 5-7, 12-15, 18-23, 26-30, November 9-13, 16-23, 29-30, and December 1-3, 6-9, 14-17, 1998. The total cost which the claimant charged to the Carrier's corporate lodging card was \$1,659.30. According to the Carrier, the claimant was not authorized to use his corporate lodging card on any of the foregoing dates.

The claimant was notified by the Carrier to attend an investigation in order to develop the facts and place responsibility, if any, in connection with his alleged misuse of a Corporate lodging card during the period October 5, 1998, through December 17, 1998, while he stayed at several different motels in the Phoenix, Arizona area. As a result of the formal investigation conducted on February 5, 1999, the Carrier dismissed the claimant for violating Rules 21.5, 21.5.2, 21.5.3 and 21.6 of the Engineering Instructions. The Board finds that the discipline assessed the claimant by the Carrier in this case was warranted for the following reasons.

The following rules are applicable to the Board's decision in this case. Rule 21.5 of the Engineering Instructions, entitled "Check Inn Cards," provides, in relevant part, as follows: "When you use the Check Inn card for the first time, you become personally liable for any charges that accrue for using the card for other than business purposes as provided in these instructions."

Rule 21.5.2 of the Engineering Instructions, entitled "Using Check Inn Cards," provides:

Qualified employees using a Check Inn card must do the following:

1. Use the Check Inn card only for lodging expenses on the dates service is performed and/or the night immediately preceding the start of the work week.

2. Before departure, pay for expenses incurred for food, phone, etc., in a manner satisfactory to hotel management.

3. Unless you report a card lost or stolen, you must pay for charges in case of unauthorized use. Check Inn cards are authorized for use only by the employee whose name and identification number are embossed on the card.

4. Present the Check Inn card to the lodging facility when checking in.

5. Sign the registration card voucher at the registration desk when checking in.

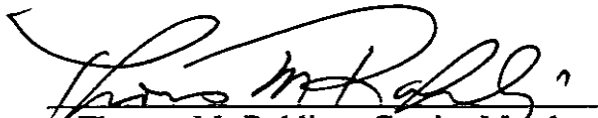
CLC has provided the hotels with a form on which employees' Check Inn cards will be imprinted. Each employee must sign in at the registration desk. Each employee must check out when departing to verify the length of the stay.

The record reveals that the claimant did not render services to the Carrier on the dates when he utilized the Carrier's corporate lodging card as charged by the Carrier. At the investigation, the claimant admitted that he used his corporate lodging card during the months of October, November and December 1998. The claimant explained that he used his corporate lodging card because he was searching for work during this time period, and he needed to save his money in order to make the payments for his truck loan. The Board finds that this excuse asserted by the claimant does not justify or excuse an employee's unauthorized use of a corporate lodging card. Rule 21.5.2 of the Engineering Instructions provides that the claimant may only use his Check Inn card for lodging expenses on the dates when he performed service for the Carrier. The claimant has clearly violated this rule. Theft or other acts committed by an employee with the intent to defraud the Carrier of monies or property constitute rule

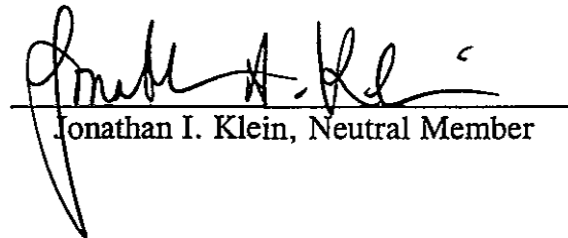
violations which warrant discharge. For each of these reasons, the claimant was properly discharged by the Carrier and the claim must be denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 29th day of June, 1999.