

PUBLIC LAW BOARD NO 6850

**Award No.
Case No. 138**

PARTIES TO DISPUTE:
**(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad**

STATEMENT OF CLAIM:

- 1. The Carrier violated the current Agreement when dismissing Mr. M. A. Romero from service for his alleged violation of Maintenance of Way Operating Rule 1.6, number 4 and Rule 1.13; and Maintenance of Way Safety Rule S-1.2.5 for allegedly being dishonest on claims of weekend travel allowance and failure to comply with instructions and policies governing weekend travel allowance and corporate lodging on June 11, 12 and 13, 1999.**
- 2. As a consequence of the Carrier's violation referred to above, Mr. Romero shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.**

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.

System Gang TP-13 was lodged at a motel in Pueblo, Colorado. The weekend of June 11, 12 and 13, 1999, was the third weekend for which the Carrier became obligated pursuant to Article XIV of the 1996 National Agreement to reimburse those employees who elected to drive home using the following schedule:

0-100 miles	\$ 0.00
101-200 miles	25.00
201-300 miles	50.00
301-400 miles	75.00
401-500 miles	\$100.00 plus \$25.00 per each 100 mile increments thereafter.

There occurred an incident in the afternoon of Saturday, June 12, 1999, wherein employee E. D. Martinez, (Case 140) who had been incorrectly assigned to a suite by the motel staff, refused to relocate to a regular sleeping room. The motel staff complained to the Foreman who in turn advised the Roadmaster who then called the motel. The Roadmaster was advised of the specifics, but was told that between the time they called the Foreman and the Roadmaster's call to them, the matter had been settled.

Monday, June 14, 1999, was the day each employee who claimed reimbursement for traveling home turned in a form labeled TRAVEL HOME ALLOWANCE LOG SHEET.

Employee Martinez turned in a request to be paid 3420 miles traveling from Pueblo, Colorado, to his home in Clovis, California and return. The Roadmaster must have started a preliminary investigation of employee Martinez as employee G. Lyles (Case 139) came to him on June 15, and started the conversation off by saying he understood there was a lodging problem. During the conversation, employee Lyles then concluded the conversation by saying, "you and I both know I didn't make the trip."

The Roadmaster also knew that employee Lyles turned in a travel log sheet seeking 3420 round trip miles traveling on June 11 and June 13 from Pueblo, Colorado, to Fresno, California, and return.

The Roadmaster was aware that on occasion Employees Martinez, Lyles and Romero sometimes carpooled, so he checked on Romero and found he also turned in a log sheet indicating travel on June 11 & June 13 from Pueblo, Colorado, to Richmond, California, and return and was claiming reimbursement for 3820 miles.

The Roadmaster contacted the Division Engineer seeking advice as to how to handle this matter and he was advised to contact Carrier's Special Officer headquartered at Pueblo, Colorado, to investigate the suspected false claims.

The Special Officer did investigate, following which each Claimant received a notice of an investigation, reading as follows:

"...for violation of Maintenance of Way Operating Rule 1.6, Number 4 and Rule 1.13; and Maintenance of Way Safety Rule S-1.2.5 by being dishonest on claims of weekend travel allowance and failure to comply with instructions and policies governing weekend travel allowance and corporate lodging, while assigned as Machine Operator on Tie Gang TP13 working near and lodging at Ramada Inn, Pueblo, Colorado on the weekend of June 11, 12, and 13, 1999 as disclosed by testimonies offered at investigation accorded you on July 28, 1999...."

The investigation was finally held, and on August 20, 1999, each Claimant was advised they had been dismissed from Carrier's service.

What follows is the Board's findings as it relates only to the Claimant identified in the Statement of Claim.

The Special Agent had a one-on-one talk with Claimant. He advised Claimant of his rights to have a Union Representative present during the discussion if he so requested. Claimant waived that right and did tell the Agent he did not go home, but that he did go with a coworker to that coworker's home in Santa Fe, New Mexico, stayed in the coworker's home and returned to the Ramada Inn at Pueblo, Colorado. Claimant also furnished a handwritten statement which supported his oral admission of fraud. It reads as follows:

"...On Friday 6-11-99 at approximately 5:30 pm, I left the Ramada Inn on Hwy. 50 in Pueblo, Colo. I went with some co-worker in his car and we drove to Santa Fe, NM. The co-worker has family in Santa Fe, NM and we stayed at his family's home. The co-worker and I left Santa Fe, NM and drove directly back to Pueblo, Colo. I then checked back in at the Ramada Inn on Hwy. 50 in Pueblo, Colo. On Monday 6-14-99 at approximately 06:45 hrs I gave my supervisor Jim Barnes a Fraudulent Milage (sic) Slip claiming I drove from Pueblo, Colo to Richmond, Calif. I knew this claim was false. I spoke with the Special Agent today without union representation. Union Representative was offered to me, but I declined it. I was advised by the Special Agent that I was not under arrest, I was free to leave and this is not a criminal investigation...."

Claimant, between the date of the written confession and the investigation, realized that because of his fraudulent claim for mileage, he was placing his career with the Carrier in jeopardy. He then set out to prove he did go home. He furnished a statement from his wife and daughter that he was home. He also had a statement, supposedly from the Park Lake Family Dentistry at Hercules, California, indicating that he went to that office on June 12, but that they were not seeing patients on that

day. Claimant also submitted an alleged statement from an individual claiming to be a Border Patrol Agent who stated he picked Claimant up at Clines Corner (unknown location) who in turn assisted the Border Patrol Agent in the drive to Claimant's home and return.

The statements from Claimant's family are self-serving. The statement on Dental Clinic stationery leaves nothing but questions. If they were not receiving patients on Saturday, June 12, 1999, were they even open so someone could walk in to be denied service? The statement from the alleged Border Patrol Agent is likewise suspect. As pointed out by the Carrier, for Claimant and the Border Patrol Agent to travel 3,840 miles in 27 hours, they would have to average 142.22 miles per hour. Even in Montana or on the freeways, this would be an extraordinary accomplishment. Besides, the motel records reflect Claimant checked out of the motel on June 12, 1999, at 12:57 PM and checked back in at 2:31 AM on June 13, 1999.

This Board is not swayed by the alleged statements Claimant presented in an effort to offset the written statement he gave to the Special Agent.

The charges assessed by the Carrier have been sustained by substantial evidence. Fraud or theft are charges sufficient to warrant the discipline of dismissal. This Board finds no mitigating circumstances that could be considered.

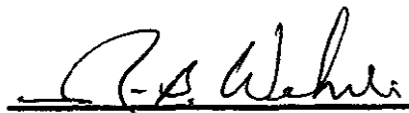
AWARD

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


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: June 28, 2000