

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 28

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

Carrier's decision to dismiss Central Region Maintenance of Way employee J.J. Juarequi, effective July 26, 1996 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from July 26, 1996. (08-14-AA/150-13D2-968)

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.

On June 4, 1996, Carrier notified Claimant of an Investigation as follows:

"...Arrange to report to the Superintendent's Office...on Friday, June 7, 1996, at 1:30 PM, with your representative and witness(es), if desired, for formal investigation to develop the facts and place responsibility, if any, concerning your alleged unauthorized use of Corporate Lodging facilities on May 15 and 16, 1996, at the Days Inn of Las Cruces, in possible violation of Rules 1.6 and 1.25 of the General Code of Operating Rules, Third Edition, effective April 10, 1994, as supplemented or amended, and Rules 89.11.1 and 89.11.2 of the Chief Engineer's Instructions, effective November 10, 1995...."

Following the Investigation, which was held on July 12, 1996, Claimant was dismissed from Carrier's service

A review of the Investigation and the on-property handling reveals to this Board that Carrier met the substantial evidence criteria necessary to sustain discipline. Claimant registered at the Days Inn in Las Cruces, New Mexico, under the guise of an employee entitled to corporate lodging, then

handed the key to a non-carrier employee, knowing full well that the Inn would bill the Carrier. The allegation, without proof, that Claimant offered to pay the Inn for the two nights billed to corporate lodging was an obvious afterthought. Claimant could very well, at the time he registered, indicated the stay was personal and that he would pay, but he did not.

Under the circumstances, Claimant attempted to defraud the Carrier out of the price of two nights stay at an Inn. Clearly, Claimant was in violation of Rule 1.6 as well as the other Rules cited.

Reviewing Claimant's work history, it is a fact that Claimant lost about nine months service commencing March, 1983, for another unknown act of dishonesty. Claimant was fortunate that the dishonesty episode in 1983, resulted only in a nine month suspension, but, obviously, he failed to understand the seriousness in this breach of employer-employee relationship.

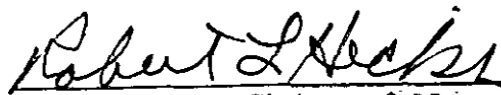
The discipline of dismissal is appropriate.

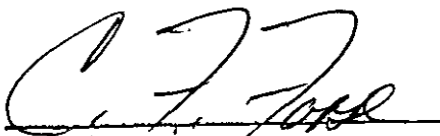
AWARD


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

  
C. F. Foose  
Labor Member

  
Greg Griffin  
Carrier Member

Dated 1/13/97