

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 36

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM

Carrier's decision to dismiss Eastern Region Maintenance of Way employee S. L. Brown, effective January 3, 1997 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 January 3, 1997. (01-22-AA-97/130-13D2-9613)

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.

The Carrier on December 9, 1996, wrote Claimant as follows:

"You are hereby notified to attend formal investigation...on Tuesday, December 17, 1996 to develop all the facts and circumstances in connection with your alleged misuse of BNSF Contract Lodging Card (CLC) between the dates of October 14, 1996 and December 5, 1996, and for your alleged dishonesty when answering questions from company officials concerning the use of the Contract Lodging Card, and for your alleged failure to pay telephone expenses prior to departing from the Coronado Inn on November 27, 1996.

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Possible violation of Rules 1.2.7, 1.3.1, 1.4, 1.6(4), 1.9, 1.13, of the BNSF Maintenance of Way Operating Rules effective August 1, 1996 and Maintenance of Way Bulletin Instruction No. 16 as supplemented on September 22, 1995 (portion labeled 'CLC card and Motel Registration')...."

The Investigation was held as scheduled, following which, the Carrier dismissed Claimant from service.

After reading the transcript of the Investigation and the positions of each party as set forth in the on-property handling, this Board finds that the Carrier has met the substantial evidence criteria clearly establishing Claimant's culpability for the charges assessed.

It has been established that Claimant knew the purpose and intent of the Corporate Lodging Card (CLC) yet proceeded to use the card improperly by charging the Carrier for lodgings when he did not perform service on the following day. Specifically, Claimant charged the Carrier lodging for the nights of October 26, November 2, 7, 8, 9 and 10, 1996, even though he did not work the following day.

Claimant also misrepresented himself as a member of another craft to gain lodging at a facility that did not accept the CLC, and when asked by his Supervisor, he denied the misrepresentation. Claimant finally admitted his act only after he was face-to-face with the motel clerk.

Clearly, Claimant has attempted to defraud the Carrier, which is a serious violation of and by itself, and when one reviews the disciplinary record of Claimant prior to this incident since he established seniority on September 9, 1995, the dismissal is not deemed arbitrary, capricious nor an abuse of Carrier's authority

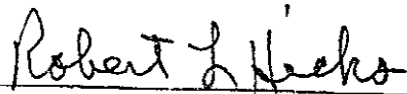
#### AWARD

Claim denied.

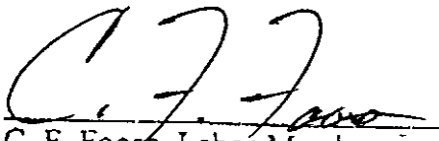
#### ORDER

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 June 9, 1997