

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 362**

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant A. Vigil (1235720) was dismissed from service for violation of Rules 1.6 - Conduct and Rule 1.25 - Credit or Property, Engineering Instructions 21.4.2 - Changing or Canceling Reservations (formerly 21.4.5). It was claimed that Mr. Vigil used company credit to pay for a hotel room when he was not performing any work on July 9 and 10, 2008. The Claimant should be paid for all wages lost and made whole commencing August 22, 2008 and continuing forward until returned to work. The discipline was excessive.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimants discipline records and make Claimants whole for all time lost.

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.

This is the second Investigation for Claimant that was held July 25, 2008.

The letter setting an Investigation for Claimant reads as follows:

"...to develop the facts and place responsibility, if any, in possible violation of Rules 1.6 and 1.25 of Maintenance of Way Operating Rules, effective October 31, 2004, and Engineering Instructions 21.4.5, effective April 1, 2007, as supplemented or amended. In connection with your alleged having a motel room in Belen, New Mexico on the nights of July 9, & 10th, 2008 when you were not working, while working as a Foreman on Switch Maintenance Gang on the Clovis Subdivision."

July 9th and 10th were workdays number 3 and 4 of a four day workweek.

Claimant contends he was sick and that he called his Supervisor for permission to be off, which was granted. Although he did not work on the 9th, he stayed in the hotel at the Carrier's expense but without Carrier's approval. When Claimant received permission to be off, he told his Supervisor that he still was in the room to which he was assigned and he stated his Supervisor knew he was in the hotel on the 9th.

The hotel charged the Carrier lodging for July 9th although he was not eligible for a room at the Carrier's expense. On July 10th, he did not stay in the hotel, yet the hotel billed the Carrier for that day also.

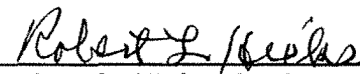
Obviously Claimant did not check out, nor did he inform the hotel the circumstances for staying in the room, and even though he asked a fellow Laborer to check him out, it was not done. The bill for the 9th and 10th was the responsibility of Claimant, not the Carrier. The Carrier terminated Claimant's service. The improper use of the Carrier's credit or credit cards is stealing and is a major offense.

AWARD

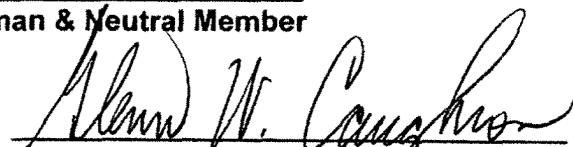
Claim denied.

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


David D. Tanner, For the Employees
Dated: 3/15/2010


Glenn W. Caughron, For the Carrier