

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 503 – Award No. 503 – D. Boyce
Carrier File No. 14-18-0551
Organization File No. 2401-BN40D2-183

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following second level claim appeal in response to the Jenkins denial dated September 10, 2018, and received in our office on September 11, 2018 on behalf of Dajuan Boyce (0216804) Seniority Date 06-08-2013 for the removal of the Claimant's Dismissal. In addition, we request all record of discipline removed from the Claimant's record with seniority rights and entitled benefits restored. 1 The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s):

1. straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the Claimant while wrongfully removed from service);

2. any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service, including any and all 401(k) contributions including any market adjustments; including vacation, health insurance benefits and 401(k) contributions with market adjustments if applicable;

3. overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had the claimant not been removed from service;

4. Health, Dental and Vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly disciplined commencing June 15, 2018, continuing forward and/or otherwise made whole. All notations of the disciplined should be removed from all Carrier records.

FINDINGS:

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, D. Boyce, had been employed by the Carrier since 2013. On June 15, 2018, following an investigation, the Carrier found that Claimant had utilized company lodging on his rest days in January, February, and March 2018. The Carrier concluded that Claimant had violated Engineering Instruction (EI) 21.1 Lodging Procedures (General) and was guilty of dishonesty. The Carrier dismissed him from service.

The facts of this case are not in dispute. At the relevant time, Claimant was a mobile Track Inspector working out of the Carrier's Eola Depot with a shift of 0700 to 1500 Tuesday through Saturday. During a discussion concerning an unrelated matter, Claimant informed his supervisor, Roadmaster Andrew Wordekemper, that he was staying in corporate lodging every night. The situation raised concerns for Mr. Wordekemper, as he knew Claimant did not live far from Eola and would normally not be entitled to Carrier paid for lodging every day of the week. On April 12, 2018, he obtained records of Claimant's use of Carrier-paid lodging from January 1, 2018 to March 31, 2018, and compared it to Claimant's work schedule and pay records. He discovered 28 occasions where Claimant stayed at a hotel when he was on a rest day or approved absence, even though Claimant did not meet the Agreement requirement that he live 50 miles from his designated assembly point to be entitled to Carrier-paid lodging on such days.

Claimant did not attend the investigation. There was no dispute that Claimant had misused Carrier lodging as alleged. The Organization representative stated at the investigation that Claimant told him he was recently divorced and was staying at the hotel as he would otherwise have had nowhere to stay.

While the Organization asserts that Claimant obviously misunderstood the Carrier's lodging requirements, he did not appear to explain his situation and the statement he provided the Organization demonstrates otherwise. There is no evidence that he discussed his personal situation with the Carrier or attempted to obtain assistance, and it is well-established that utilizing Carrier-provided lodging for personal purposes is dishonest, essentially amounting to theft of Carrier funds. It is well established that this is a dismissible offense, even for a first violation and, as the Carrier points out, Claimant has an extensive disciplinary record.

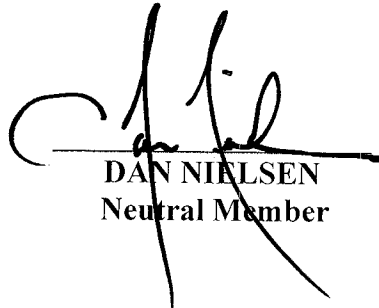
As the Carrier notes, this Board addressed a similar issue in Case No. 457, where we stated:

On the merits, the record is clear that Claimant utilized corporate lodging while he was on vacation, a clear violation of Carrier Rules and common-sense principles of which Claimant had to be aware. The Carrier has met its burden of proving the charges against Claimant by substantial evidence, and indeed the Organization, notwithstanding its best efforts, had nothing with which to refute the Carrier's case. With respect to the penalty, we agree with the Carrier that Claimant essentially engaged in theft against his employer, one of the worst offenses an employee can commit. The PEPA's classification of this sort of dishonesty as a first-time dismissible offense is well in line with established precedent in this area, and we see no reason to overturn the Carrier's imposition of this penalty on Claimant.

We reach the same result here.

AWARD

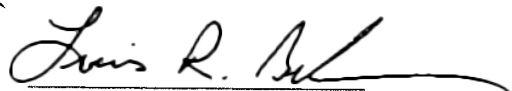
Claim denied.



DAN NIELSEN
Neutral Member



SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.