

**PUBLIC LAW BOARD NO. 5850**

**Case No. /Award No. 572**  
**Carrier File No.: 14-21-0367**  
**Organization File No.: 2421SL13C5-2140**  
**Claimant: K. Taylor**

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<b>BNSF RAILWAY COMPANY</b>	)
<b>(former Burlington Northern Railroad Company)</b>	)
	)
<b>-and-</b>	)
	)
<b>BROTHERHOOD OF MAINTENANCE</b>	)
<b>OF WAY EMPLOYES DIVISION - IBT</b>	)

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**STATEMENT OF CLAIM:**

*We present the following claim on behalf of Keren Taylor (0303289) Seniority date June 02, 2014 for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for:*

- 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended);*
- 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service.*
- 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended.*
- 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been wrongfully withheld from service beginning September 14, 2021 and unjustly dismissed from service commencing October 19, 2021, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.*

**CARRIER POSITION:**

In the summer of 2021, General Director Line Maintenance A. Richardson informed Program Manager – Compliance W. Parker of rumors that some employees, including Claimant, were misusing the PC55 travel allowance. Parker began an inquiry and found five occasions where Claimant had claimed PC55 for weekend travel while also reserving rooms at Company expense. Because Claimant failed to cancel his lodging reservations while reporting a trip home, BNSF was charged for both lodging and travel.

Pay Code 55 is an allowance payable to employees working in mobile positions who elect to travel home over their assigned rest days in lieu of staying in Company provided lodging. In order to prevent improper payments, an employee submitting for PC55 must provide actual proof that they traveled home in the form of a bona-fide printed receipt for a purchase or transaction consummated by the employee at their home residence location. It is uncontested that Claimant provided such receipts for the travel he claimed.

There are five incidents under review.

- The first was February 4-7 when Claimant booked a hotel in Las Vegas 188 miles from his work area, extended the stay to February 8, had an unapproved absence for February 7, yet claimed he drove home to Texas to attend to his daughter, a trip that would take over 40 hours.
- The second was March 25-28 when Claimant booked a room at Buena Park, CA, claimed he needed to stay there for an oil change (TR 90) yet also filed a PC55, again requesting pay for traveling home to Texas.
- On April 9-11 Claimant again booked lodging in Las Vegas 111 miles from his work area, yet also filed a PC55 asserting he went home.
- From April 29 to May 3 he again booked lodging in Las Vegas, and also booked lodging with his gang 111 miles away. In addition, he claimed he traveled home and filed a PC55. No reason was offered for driving home on this occasion.
- The last incident was June 13-15 when he booked lodging in Las Vegas yet again, also booked lodging with his gang 157 miles away, and additionally filed a PC55 for travel back to Texas. He asserts that on this occasion he actually stayed at a third hotel in Las Vegas.

Based primarily on Claimant's assertion that a personal vehicle oil change required a three-day reservation at a hotel over 100 miles from his work location, the Carrier deemed Claimant to lack credibility, and discounted his assertion of ignorance of the applicable Engineering Instruction. Accordingly, his employment was terminated by letter dated October 19, 2021. This dismissal is the subject of the instant claim.

**ORGANIZATION POSITION:**

Claimant testified that he was unaware of any "no show" policy for lodging and did not know that BNSF would be charged if he did not check into a hotel. The Organization maintains Engineering Instructions are not rules, and supports this contention with testimony from Company witnesses Parker and Taylor. It also argues that BNSF employees are not trained or tested over these instructions.

Claimant contended he made the reservations for lodging so that he could handle various responsibilities. The hotels were scheduled away from his work sites because his understanding from BNSF supervisors was that he could book away from the work location. He was entitled to weekend lodging because he was working over 50 miles away from home. He acknowledged he should have called and cancelled the rooms when he realized he was not going to be able to stay over the weekend, but maintains he did not know BNSF would be charged. His intentions were to stay the weekend but unforeseen issues arose at home that required him to go home over the weekends. He contends he did not stay at the hotels on the dates in question.

As the Organization sees it, the Carrier has not proved anything that would be considered a violation of MOWOR 1.6 Conduct, the rule under which Claimant was charged. At no time was he dishonest or in violation of other bullet points of the rule. BNSF has not proved he stayed at any of the hotels, or that any of the PC55 charges were invalid. BNSF's allegations are unsubstantiated and Claimant's dismissal should therefore be overturned.

**DECISION:**

Claimant was dismissed by letter dated October 19, 2021, stating as follows in pertinent part:

As a result of investigation held on Thursday, September 23, 2021 at 0900 hours at Conference Room, 1909 County Road 129, Pearland, TX, 77581 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for misconduct and misusing corporate lodging between February 4nd 2021 and June 14th 2021 and fraudulently claiming pay code 55 on multiple weekends during this time period while working on gang TRPX0018 as a Machine Operator while on the California Division. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.6 Conduct.

Applicable Rules and Instructions provide as follows in pertinent part:

**1.6 Conduct**

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome or
7. Discourteous

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.

### **EI 21.6.1 Weekend Reservations**

Employees may retain a room over their rest days for BNSF work-related purposes only, provided that they have a reservation made through the CLC reservation system and check in to the lodging facility immediately after signing out from the previous work week.

Employees assigned to mobile positions electing to remain at the worksite over their rest days must stay in the designated lodging facility where lodging during the preceding workweek, unless gang is mobilizing to a new work location over the rest days. In that case, the employee is required to stay at the newly designated lodging facility.

Employees cannot retain a room over the rest days for the sole purpose of storing luggage or other personal items when traveling home over the rest days.

Employees must advise their Foremen before the end of their shift on Wednesday in the week that they are working if they desire weekend lodging or a Sunday check-in. The Foreman or Foreman's designee must contact the Traveler Support Center no later than Thursday morning to confirm weekend reservations for the employee.

Due to motel billing requirements, employees must sign out on the last day of their scheduled work week, even if they desire weekend lodging or a Sunday check-in.

If an employee arrives at a lodging facility and does not have a weekend lodging reservation, a room may not be available. In that case, the employee must contact the Foreman or Foreman's designee to arrange for lodging accommodations.

**EI 21.6.2 Canceling Weekend Reservations**

If a weekend room reservation has been made for an employee and he or she fails to occupy the reserved room, BNSF may have to pay a “no show” charge unless the reservation has been cancelled.

The role of EI 21.6.1 is contested in this case. We agree with the Carrier that Claimant was responsible for being familiar with all rules and instructions which apply to him in his capacity as a machine operator. The right of employees to obtain a company-paid room over the weekend is subject to conditions: the reservation must be made through the Carrier’s reservation system and the employee must check into the lodging facility immediately after signing out from the previous work week. Claimant admits he did not check into the lodging facilities that were reserved for him. The Instruction specifies that employees who elect to remain at a worksite over their rest days are obliged to stay in the designated lodging facility. By booking lodging, Claimant signaled that he had elected to remain at the work site. However, he did not stay there as required.

EI 21.6.2 makes it clear that unless a room is cancelled, the Carrier has to pay for it. At the time of his dismissal, Claimant was 34 years old and had worked for the Carrier for approximately 8 ½ years, most of it in a mobile gang. We believe he knew or should have known that uncanceled reservations result in a charge. Even if he was uncertain, which is a stretch, he could have and should have asked a supervisor or checked the applicable Engineering Instructions. He repeatedly arranged for lodging at the Carrier’s expense then did something else. At the very least, this constitutes neglect.

A closer examination of Claimant’s story establishes that Claimant was not only neglectful of the Carrier’s interests, he was dishonest in breach of Rule 1.6 Conduct. For the weekend of March 25-28, Claimant asserted two things: that he needed to stay in California for three days to get an oil change and that he drive 40 hours to return home. These two assertions are disharmonious and persuade the Board that Claimant was being untruthful. Then on June 13-15, Claimant stated he was in Las Vegas, not even at one of the two rooms the Carrier paid for, yet he simultaneously charged the Carrier \$852.01 for his travel home. Again, the Board is persuaded that Claimant was dishonest. These two instances are in addition to the three weekends when Claimant knew he had Carrier-paid hotel reservations, yet collected compensation for travel to Texas. The Carrier has substantiated the charges against Claimant in this case.

**AWARD:**

The claim is denied.

Dated: January 7, 2024



Patricia T. Bittel, Neutral Member



Jeffery L Fry, Labor Member



Logan McKenna, Carrier Member