

BEFORE PUBLIC LAW BOARD NO. 6043**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES****and****ILLINOIS CENTRAL RAILROAD COMPANY****Case No. 4****STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:**

1. The dismissal of Trackman R. L. Abram for his alleged use and/or possession of alcohol while in Company provided lodging and his alleged unauthorized use of Company credit on March 18, 1996 was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Carrier's File 267 BMWE).
2. Trackman R. L. Abram shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered in accordance with 33(i).

FINDINGS:

The Claimant, a trackman on a mobile production gang, was scheduled to work at Lucedale, Mississippi. On March 18, 1998, the Claimant had informed employee Cushman at the job site that he was feeling ill. Claimant checked into the motel where the gang was required to stay. After work that day, the Claimant was observed by Cushman asleep in his room while two women were sitting there drinking beer. Later that evening, Cushman drove the Claimant to the Lucedale Hospital where the Claimant was instructed to stay off work for two days and to go see his heart doctor. *

On March 19, 1996, when the Claimant did not show up at the work site, Track Supervisor Smith drove to the hotel and met the Claimant outside. Smith gave the Claimant a notice of investigation and found two women and a beer can in the Claimant's room.

The investigation was held and it was determined that the Claimant was guilty of violating Rules G and O. Consequently, the Claimant was dismissed from service effective April 8, 1996.

The Organization filed a claim on behalf of the Claimant contending that the charges against the Claimant were unproven. The Organization argues that the Claimant had checked into a motel where the gang was required to stay. Furthermore, because the Claimant is part of a mobile gang, the Carrier is required to provide lodging for employees assigned thereto. In addition, the Organization argues that the Claimant was not drinking beer in his hotel room. The two women who were in the Claimant's room were his relatives. They had brought some food for him and they were drinking the beer. They also had taken him to Western Union the following day so that he could pick up money which his wife had wired to him.

The Carrier argues that employees who do not perform work on a designated day cannot use the corporate lodging card to check into a motel on that day. The Carrier denied the claim.

The parties being unable to resolve the issue, this matter came before this Board.

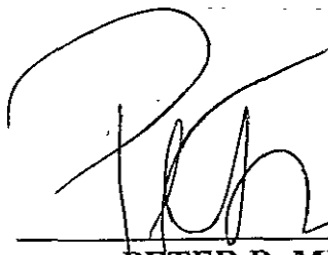
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was in violation of Rule O and G. Rule O prohibits the unauthorized use of the railroad's credit. The record is clear that the Claimant used the Carrier's corporate lodging card without authorization. Rule G prohibits employees from possessing alcoholic beverages while occupying facilities paid for or furnished by the Company. Since the Claimant's room was being paid for by the Carrier, the Claimant was clearly in violation of that rule.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The record reveals that this Claimant was previously dismissed by the Carrier for the unauthorized use of the Carrier's credit. Consequently, he can hardly claim that he was ignorant of the Carrier rules in that regard. That Rule O violation along with the Rule G violation certainly formed a legitimate basis for the Carrier to terminate the Claimant. This Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

CARRIER MEMBER

ORGANIZATION MEMBER

Dated: 7-6-98

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