

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 356, (Case No. 356)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Michelle McBride, Carrier Member
Louis R. Below, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing July 23, 2020, when Claimant Brian R. Hayes (0313668) was assessed a Standard Formal Reprimand for failure to show proper conduct while staying at a Carrier provided La Quinta Inn and Suites located in La Palma, CA, on June 4, 2020, while working as a Machine Operator with TTPX0046 on the Harbor Subdivision.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing July 23, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0277) (Organization File No. 2417-SL13C5-2029)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate Claimant was assigned as a Machine Operator with TTPX0046 on the Harbor Subdivision. It was alleged that Claimant may have failed to show proper conduct while

staying at a Carrier provided hotel between June 1 and 4, 2020. The La Quinta Inn hotel staff reported to the Carrier that after the Claimant checked out of the hotel they discovered upon entering the Claimant's room the toilet appeared to have not been flushed, bathroom floor was very wet, carpet was soaking wet in the entrance, closet and by the bed, carpets smelled awful, lots of trash spread on the floor, towels had poo on them and smelled bad, toilet and bathroom full of feces, entire room smelled awful and because of that Claimant was directed to attend a formal Investigation on June 24, 2020, concerning in pertinent part the following:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to show proper conduct while staying at a BNSF provided La Quinta Inn and Suites located on 3 Centerpointe Drive, La Palma, CA 90623 on June 4, 2020 while working as a machine operator with TTPX0046 on the Harbor Subdivision. The date BNSF received first knowledge of this alleged violation is June 10, 2020."

On July 23, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Standard Formal Reprimand with a One Year Review Period.

It is the Organization's position that on the morning of June 1, 2020, Claimant awoke to a wet bathroom floor at the aforementioned La Quinta Inn. Claimant testified that he informed the front desk and the maintenance man on duty of a leaking toilet and subsequently notified them several more times during his stay that the leak had not been repaired. Claimant stated the room was in poor condition because the hotel did not make the necessary repairs to the room while he was staying there. He also testified that, upon checking out, the front desk clerk told Claimant he forgot to tell maintenance about the leaking toilet during Claimant's stay. The Organization concluded that the Carrier did not meet its burden of proof and it requested that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that when ADMP Bradford questioned Claimant regarding the situation at the hotel and the Claimant told him the only thing he could think of was the toilet overflowed and that he had reported the issue several times to hotel staff. However, when Mr. Bradford talked with the hotel's General Manager, she indicated the extent of the damage, trash, and feces in the room could not have been caused by only the toilet overflowing. The Carrier argued that Claimant's testimony was inconsistent and contrary to the several statements of the hotel employees. Carrier further argued that after proving Claimant was guilty as charged it disciplined the Claimant in a corrective and lenient manner. It asked that the discipline not be disturbed and the claim remain denied.

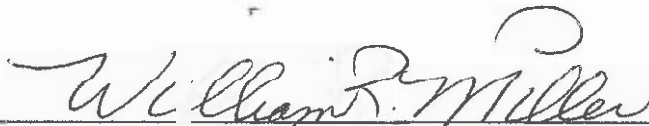
The Board has thoroughly reviewed the transcript and record of evidence and it is determined that the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

Review of the Claimant's testimony reveals he stated that he initially reported the leaky toilet the first morning after he checked in which would have been Monday, June 1st. Subsequently, that changed to Tuesday, June 2nd and then again to Wednesday, June 3rd. Claimant's testimony as to Claimant's initial reporting of the leak (See Page 30 of the Transcript) is contrary to Claimant's conversation with ADMP Bradford where Claimant stated he reported the leak several times with an initial reporting being June 1, 2020. It is determined that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the offense Claimant had approximately six years of service. Review of Claimant's Disciplinary Record reveals that only two months prior the subject incident Claimant signed a Waiver for failure to show proper conduct while staying at a Carrier provided hotel at another location. In accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) the discipline was appropriate and will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

AwardDate: March 25, 2022