

PUBLIC LAW BOARD NO. 7564

Case No. 48/Award No. 48
Carrier File No. 10-14-0149
Organization File No. C-14-D040-6
Claimant: Wyley G. Jager

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim:

1. The Carrier violated the Agreement on January 24, 2014 when it assessed Claimant Wyley G. Jager, a Level S 30-day Record Suspension, with a 3-year review period, for alleged violation of MWOR 1.13 Reporting and Complying with Instructions, for misuse of CLC Corporate Lodging on December 13, 2013, in Prosser, Washington; December 14, 2013, in Billings, Montana and December 23, 2013, in Laramie, Wyoming, assignment for the first two events was to TRPX0011 as a Group 3/4 Operator, and last event assigned to TMOX4065 as a Group 2 Operator working in Douglas, Wyoming.
2. As a consequence of the violation referred to in Part (1), Claimant's record should be cleared of the discipline and any mention of the investigation and shall be made whole for any losses.

Facts:

By letter dated January 8, 2014 the Claimant was notified that an investigation had been scheduled for January 14, 2014 "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged misuse of CLC Corporate Lodging on December 13, 2013 in Prosser, Washington; December 14, 2013 in Billings, Montana and December 23, 2013, in Laramie, Wyoming, assignment for the first two events was to TRPX0011 as a Group 3/4 Operator, and last event assigned to TMOX4065 as a Group 2 Operator working in Douglas, Wyoming. The date BNSF received first knowledge of this alleged violation is January 6, 2014." By letter dated January 10, 2014, the Claimant was informed that by mutual agreement the investigation had been postponed to January 14, 2014. Both letters informed the Claimant that he was being withheld from service pending results of the investigation.

Carrier Position:

The investigation was fair and impartial with no prejudice of the Claimant's rights and substantial evidence adduced showing a clear violation of MWOR Rule 1.13. There is on-property support for the proposition that the individual who signs the discipline notice does not have to be the same person who conducts the investigation. The Claimant was told that he was not authorized a room at Carrier expense for the night of December 23, 2013. Nevertheless he failed to cancel his reservation in Douglas, Wyoming before the required time of 4:00 PM, thereby obligating the Carrier, and he used his corporate lodging card to obtain a room that evening in Laramie, Wyoming, again obligating the Carrier. The Board is required only to interpret and apply the rules and is not to substitute its judgment for that of the Carrier or to usurp the Carrier's prerogative of providing leniency. Should the claim be sustained, the Claimant is due only that provided for in Rule 40G.

Organization Position:

The investigation was not fair and impartial and the discipline was excessive and arbitrary, as the Carrier provided no evidence of a rules violation. The Claimant's due process rights were violated when discipline was issued by other than the Conducting Officer, since Director of Administration Plett did not attend the investigation and therefore was unable to properly assess credibility. The testimony of Supervisor Vulgas that he gave the Claimant permission to book a room on the nights of December 13 and 14, 2013 shows that there was no rules violation for these stays. The Claimant made a mistake on December 23, 2013 when he did not cancel his room reservation in Douglas, Wyoming on December 23, 2013 and he has offered to make restitution. He intended to pay for the room in Laramie, Wyoming that evening, but the hotel mistakenly charged the Carrier and later corrected that error.

Findings:

The requirement to provide a fair and impartial hearing was not violated by separating the roles of Conducting Officer and disciplinarian. On-property awards provide significant precedent for doing it this way.

The Claimant has been charged with unauthorized use of corporate lodging on December 13 and 14, 2013 and twice on December 23, 2013. Roadmaster Vulgas testified without contradiction that he authorized corporate lodging for the first two dates, which respectively involved stays in Prosser, Washington and Billings, Montana. Not only has the Carrier not been able to provide substantial evidence of a violation associated with these two stays, but also the Organization has shown that there was no violation. A careful reading of the investigation transcript should have made this readily apparent to Director of Administration Plett, who issued the discipline.

The Claimant was not authorized lodging at Carrier expense for the night of December 23, 2014 and the transcript makes clear that he understood that. The charge that was incurred for the reservation in Douglas, Wyoming is not considered intentional, but was the result of the Claimant's carelessness in not cancelling the reservation. The Board takes note of the Claimant's acceptance of responsibility and his offer to make restitution to the Carrier.

The Board is unclear as to Director Plett's rationale in assessing discipline for the December 23, 2013 Laramie, Wyoming stay. It is possible that Director Plett found the Claimant's testimony credible, but believed that the documentary evidence supported a violation nonetheless. It is also possible that Director Plett did not find the Claimant credible and concluded that he deliberately attempted to have the Carrier billed for an unauthorized stay. Because the Board does not understand the rationale for the discipline and because the Carrier simply cannot credibly argue for the December 13 and 14, 2013 stays as a basis for discipline, as General Director, Labor Relations Osborn implicitly acknowledged by not mentioning these two stays in his declination, the Board feels compelled to undertake its own analysis. The Claimant's testimony about the Laramie, Wyoming stay is viewed as credible. He produced both the CLC Corporate Lodging card and his personal credit card when he checked in, hoping to get the corporate discount and expecting the charge to go to his credit card. The charge to the Carrier has since been refunded and redirected to the Claimant's personal credit card, as he originally intended.


Unlike cases involving safety, with little or no margin for error, the Board believes that the Claimant's intent should be considered in this instance. The Claimant made mistakes when he failed to cancel the Douglas, Wyoming reservation and when he did not realize that using the CLC Corporate Lodging card in Laramie, Wyoming was improper, but he did not intentionally violate MWOR 1.13 Reporting and Complying with Instructions. In light of the unique circumstances of this case, the assessment of a Level S 30-day Record Suspension for two stays that the Organization showed were not in violation of MWOR 1.13 Reporting and Complying with Instructions, a third stay that the Claimant believed he had charged to his personal credit card and another reservation that was unintentionally not timely cancelled serves no useful purpose and is viewed as an abuse of discretion.

Award:

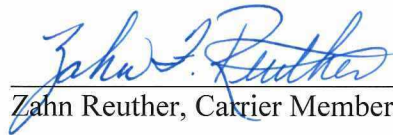
Claim sustained.

Order:

The Board, after consideration of the dispute identified above, hereby orders that the Claimant receive the remedy called for in Rule 40G, which will not include back pay since no work was lost. The Carrier is to make the award effective on or before thirty (30) days after the award is adopted.



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas
November 30, 2015