

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 138

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. L. Hairston for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for time lost as a result of his dismissal from service following a formal investigation held on February 13, 2004, for unauthorized use of the Norfolk Southern Lodging Voucher System at Danville, Virginia for the night of December 27, 2003.

(Carrier File MW-ROAN-03-58-LM-427)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant D. L. Hairston entered the service of the Carrier as a laborer in the Maintenance of Way Department on April 22, 1992. He was on vacation on December 27, 2003, when he stayed at a motel in Danville, Virginia. He used his Carrier-issued Lodging Voucher Card, and the room was direct billed to the Carrier. Approximately a month later, the Assistant Virginia Division Engineer noticed the charge while auditing the lodging voucher charges to the Carrier for the month of December, 2003. A review of Claimant's payroll records revealed that Claimant had been on vacation on December 27, 2003.

By letter dated January 29, 2004, Claimant was notified to attend an investigation on February 13, 2004, in connection with conduct unbecoming an employee for unauthorized use of the Carrier's Lodging Voucher System on December 27, 2003. The investigation was held as scheduled, during which Claimant admitted he had stayed at the hotel while on vacation.

However, according to Claimant, the motel erroneously charged the Carrier after he used his Lodging Voucher identification card to prove he was an employee of the Carrier, in order to receive a discount on the room. He testified that he presented both his Lodging Voucher card and a personal credit card to the motel, but that the motel erred in charging the room to the Carrier.


Claimant also testified that after he was notified that the room had been charged to the Carrier, he went to the hotel on January 20, 2004, and paid the bill for the room. In support of his defense, Claimant presented a note from the motel Comptroller stating the room was direct billed to the Carrier in error.

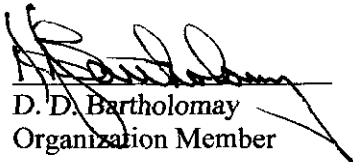
The Carrier did not find Claimant's explanation credible, and found him guilty of the charge of conduct unbecoming an employee in connection with his unauthorized use of the Lodging System. He was so advised by letter dated February 26, 2004, and dismissed from service.


Intentionally charging a motel room to the Carrier for non-business use would equate to theft and warrant dismissal. We note that Claimant had an alternative method by which he could have proven his identity as a Carrier employee, and the fact that he failed to use it did not lend credence to his version of events at the motel. In this case, either the Claimant was dishonest or grossly negligent in allowing the room to be charged to the Carrier.

Nonetheless, considering the record before the Board, including the evidence that the motel may have initially contributed to charging the room to the Carrier and Claimant's action in making reimbursement, along with his eleven years of discipline free service, the claim will be sustained in part. Claimant shall be reinstated to service without compensation for time held out of service. His time out of service shall be considered a lengthy suspension.

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board sign this award.


Mark D. Selbert
Chairman and Neutral Member


D. D. Bartholomay
Organization Member


D. L. Kerby
Carrier Member

Issued at Saint Augustine, Florida, on September 28, 2004