

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

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*****
BURLINGTON NORTHERN RAILROAD COMPANY      *
and                                         *
                                           * CASE NO. 90
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                                           * AWARD NO. 90
BROTHERHOOD OF MAINTENANCE                *
OF WAY EMPLOYES                           *
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On May 13, 1983 the Brotherhood of Maintenance of Way Employees (hereinafter the "Carrier") and the Burlington Northern Railroad Company (hereinafter the "Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 925 (hereinafter the "Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railway Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed from service. On September 28, 1987 the parties expanded the jurisdiction of the Board to cover employees who claimed that they had been improperly suspended from service or censured by the Carrier.

Although the Board consists of three (3) members, a Carrier Member, an Organization Member and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railway Labor Act.

Employees in the Maintenance of Way craft or class, who have been dismissed or suspended from the Carrier's service or who have been censured, may chose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedures.

The Agreement further establishes that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of his/her desire for expedited handling of his/her appeal, the Carrier Member shall arrange to transmit one copy of the notice of investigation, the transcript of investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of proceedings and are to be reviewed by the Referee.

In the instant case, this Board has carefully reviewed each of the above-described documents prior to reaching findings of fact and conclusions. Under the terms of the Agreement the Referee, prior to rendering a final and binding decision, has the option to request the parties to furnish additional data; including argument, evidence, and awards.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified or set aside, will determine whether there was compliance with the applicable provisions of Schedule Rule 40; whether substantial evidence was adduced at the investigation to prove the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

Background Facts

Mr. Natalio E. Alamillo, hereinafter the Claimant, entered the Carrier's service as a Laborer on March 31, 1975. The Claimant was subsequently promoted to the position of Camp Cook and he was occupying that position when he was dismissed from the Carrier's service on September 28, 1990.

The Claimant was dismissed as a result of an investigation which was held on September 5, 1990 in the Carrier's depot in Prairie Du Chien, Wisconsin. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had falsified his July 1990 expense account while working as Camp Cook on the Lakes Division Holland Welding Gang near Prairie Du Chien, Wisconsin.

Findings of the Board

Roadmaster S.S. Martin testified regarding his supervisory responsibilities for the Holland Welding Gang which began working on the Lakes Division on July 7, 1990. Roadmaster Martin testified that employees who were members of the Holland Welding Gang, including the Claimant, were authorized to file expense forms for meals and lodging for the date of July 7, 1990 because the camp cars could not be "hooked up to electricity"

and therefore "they were uninhabitable". Roadmaster Martin testified that the Claimant submitted an expense form claiming \$18.75 for lodging for the date of July 7, 1990; that he, Martin, told the Claimant that a claim for lodging had to be supported by a receipt for such expense; that the Claimant thereafter presented a receipt from the Prairie Motel in the amount of \$42.00; that he, Martin, became suspicious regarding the authenticity of said receipt; and that he requested Special Agent Robert F. White to investigate the matter.

Special Agent White testified that he conducted an investigation regarding Roadmaster Martin's suspicions concerning the possible falsification of lodging expense receipts submitted by the Claimant and by another employee on the Gang named Rios. Special Agent White testified that when he and Roadmaster Martin confronted the Claimant and fellow employee Rios individually that Mr. Rios withdrew his claim for expenses while the Claimant continued to state that the expense voucher for \$42.00 was accurate. Special Agent White testified that his investigation included interviews with personnel of the Prairie Motel, an interview with one of the guests of the Prairie Motel who had occupied the room the Claimant contended he occupied on the date in question and a review of the registration documentation maintained by the Prairie Motel. Special Agent White's investigation disclosed that the records of the Prairie Motel showed that rooms 30 and 43 were not occupied by the Claimant on July 7, 1990; that a Ms. Jane Perdue, who had a "boyfriend" working on the railroad, had occupied room 43 at the Prairie Motel on or about August 7, 1990 and room 30 on or about August 9, 1990; and that the Claimant had presented a lodging receipt from the Prairie Motel for room 43 which appeared to have an altered date showing that he stayed in that room on July 7, 1990.

The Claimant testified and engaged in the following colloquy with the Conducting Officer:

Q. Did you register into the Prairie Motel at Prairie Du Chein, Wisconsin on July 7, 1990?

A. No.

Q. Did anybody authorize you to claim motel expenses from the Prairie Motel on July 7, 1990 for wages or back expenses you may have lost?

A. No.

Q. Do you fully understand that it would be dishonest and strictly against the rules and company policy to put anything on your Expense Account that was not authorized?

A. Yeah he realizes that.

- * * *
- Q. Where did you stay on the evening of July 7, 1990?
- A. Well he said he stayed back of his own car.
- Q. You slept in your private vehicle, is that correct?
- A. Yes.
- Q. Did you alter the motel receipt dated July 7, 1990, turned in on your Expense Account?
- A. He said no. No.
- Q. How do you account for the fact that you did not stay at the Prairie Motel on July 7, 1990, yet you have a receipt for that date and we also have testimony from Special Agent White and the registration card to a Mr. Formaker for the same date and the same room?
- A. Well he said he made a mistake on the receipt.
- Q. He made a mistake on this receipt, is that the answer he gave?
- A. He said he made a mistake you know, he was really nervous is what happened. He was under pressure, you know, and he don't really understand what Mr. White and Mr. Martin asked of him. He was confused.

The Claimant also acknowledged that he was familiar with and understood Rules 530 and 564 which provide, inter alia, that employees must not be "dishonest". The Claimant further acknowledged that he did not comply with the provisions of Rules 530 and 564 when he filled out his July 1990 Expense Account.

The essence of the Organization's defense of the Claimant is (1) that the Claimant was confused and "under pressure" when he was required to produce a receipt supporting his claim for lodging for the night of July 7, 1990 and (2) that the Claimant was not guilty of dishonesty or theft since he did not receive compensation for lodging expenses for the date of July 7, 1990. The Organization further submits that the Claimant was a good employee and should not suffer dismissal as the result of an innocent mistake.

While it is true that the Claimant had an interpreter during the course of the investigation, there is no evidence in the record to dispute Roadmaster Martin's assertion that the Claimant "never needed an interpreter around me before", and therefore there is no reason for the Board to conclude that the Claimant did not understand Roadmaster Martin's request that he, the Claimant, present a receipt in order to justify payment for

lodging.

In fact, it is clear that the Claimant understood the simple requirement of providing a receipt for lodging; since he provided one, albeit the receipt was a forgery.

Special Agent White's investigation was thorough and extremely competent. His testimony and supporting documentation established, without doubt, that the receipt presented by the Claimant was fraudulent. Even without the Claimant's admission that he did not lodge at the Prairie Motel on July 7, 1990, this Board would have had no difficulty in concluding that the Claimant sought to obtain in excess of \$40.00 from the Carrier for expenses he did not incur.

Even if the Claimant was confused, or intimidated or "under pressure" when he was requested by Roadmaster Martin to provide a receipt for his lodging claim for July 7, 1990, what justification did the Claimant have for seeking \$18.75 of expenses for July 7, 1990 when he has acknowledged that he slept in his car on that date and therefore it must be presumed that he incurred no lodging expense?

The record clearly establishes that the Claimant attempted to defraud the Carrier, first by seeking \$18.75 for unreceipted "expenses" and then by presenting a fraudulent receipt for \$42.00 for lodging "expenses" for the date of July 7, 1990.

Based upon these facts, this Board concludes that the Carrier had just and sufficient cause to discipline the Claimant. The fact that the Claimant was unsuccessful in his attempt to steal from his employer does not mitigate the serious nature of his offense. Accordingly, this Board finds that the Carrier's imposition of discipline is neither arbitrary nor overly severe. Therefore, the claim will be denied.

Award: The claim is denied. This Award was signed this
5th day of February 1991.

Richard R. Kasher

Richard R. Kasher
Chairman and Neutral Member
Special Board of Adjustment No. 925