

OCT 16 1987

SPECIAL BOARD OF ADJUSTMENT NO. 279

VICE PRESIDENT -
LABOR RELATIONS

Award No. 296

Case No. 296

File 247-7263(1)(2)

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Union Pacific Railroad Company

Statement

of Claim: (1) Carrier violated the current working agreement, especially Rule 12, when Track Subdepartment employees R. C. Urban, M. W. Schmidt, M. L. Dailey, D. M. Dame, O. F. Magor, P. R. Marsh, F. L. Mueseler, M. T. White, D. B. Benshoof, D. W. Heng, J. R. Hutchens, and J. L. Hardenberger were dismissed from the service effective April 4, 1986.

(2) Claimants should now be allowed compensation for all time lost, including any overtime which have accrued to them and any holidays falling therein because of their dismissal from service as a result of investigation held on March 26, 1986, and reinstatement to service with seniority, vacation, and all other rights restored to them unimpaired.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The above twelve Claimants along with another ten employees were charged as being allegedly involved in a fraudulent lodging receipt scheme wherein the receipts were made out for \$13.00 per day. The employees involved, in most cases, paid \$2 for each receipt, filed

the lodging receipt with the Carrier and were reimbursed \$12.75 per day therefor.

The Carrier's Special Agent received information from the Falls City, Nebraska Police Chief regarding an embezzlement scheme involving employees of the South Side Manor Motel. He participated in an investigation with the Police Chief of the Assistant Manager who advised them he had been selling fraudulent lodging receipts to several of the Railroad's employees approximately from January through August 1985. He stated that the customary room rate was \$20 per week, that at the request of the employees he made out fraudulent receipts for \$13 per day and charged the employee \$2 for each receipt. The employees involved were entitled to \$12.75 per day under Arbitration Award No. 298. They, however, were actually residing in their own homes, in the home of friends or relatives, and submitted said receipt netting \$10.75 per day for expenses never incurred.

The Assistant Manager furnished a receipt book indicating the employees to whom receipts had been issued.

The Special Agent's investigation found out that receipts covering other motels or lodging places were involved also made one for \$13.00. The facility owner advised they had not rented any rooms or participated in giving false receipts.

Said Agent interviewed the Claimant. As a result of his formal report, all twenty-two were charged pursuant to Agreement Rule 12.

Twenty-two were instructed to appear at one of two scheduled investigations to:

"...develop the facts and place responsibility, if any, in connection with your alleged falsification of expense account documents and conduct unbecoming an employee in connection with criminal charges filed for theft by deception for the period of January through August 1985, which you were working in the Engineering Department on the Missouri Division."

The Superintendent concluded from the evidence adduced at the investigation that all twenty-two were guilty. All employees, including Claimants, were dismissed from service, April 4, 1987, as discipline therefor.

Additionally, Claimants and the other employees involved were charged by the Falls City Police for embezzlement. At the trial some pled guilty, were fined \$100 plus costs. Some were found guilty by a six person jury, who recommended, in essence, leniency on the grounds that the Carrier and Union and induced them to file for the lodgings.

However, the Court dismissed all charges, against all defendants, on the basis of technical procedural grounds, to wit- that the complaint failed to state an offense and were so fatally defective as not to be subject to waiver.

The dismissals of Claimants, as were most of the other employees, were reduced to a suspension after about a five (5) months absence because of their service and reasonably satisfactory service records and particular circumstances surrounding the cases.

Claimants were restored to service on a leniency basis without pay but with the right to appeal their monetary cases to this Board.

The Employees vehemently argued, in essence, and among other things, that Carrier violated Agreement Rule 12. Further, because their criminal trial had resulted in a dismissal of the charges

against all 22 accused employees that the Carrier charges, investigation and ensuing discipline should likewise be dismissed.

The Board finds no argument in the record before it to permit the conclusion that Agreement Rule 12 had been violated.

The Board finds that there was sufficient credible and competent evidence, including the admissions of the Claimants, adduced to support Carrier's conclusion as to Claimants culpability. There can be no question as to their guilt of filing false lodging claims.

Special Agent Blankenship interviewed each of the accused employees. The gist of each employee's conversation with Special Agent Blankenship as well as their closing statements at the investigation are outlined as:

M. J. Dailey - Interviewed on January 21, 1986

1. Acknowledged he had never actually stayed at the South Side Manor.
2. Acknowledged receiving \$38.25 reimbursement for expenses he never actually incurred.

M. J. Dailey Carrier's Exhibit "E2" P-51

- A. I would just like to continue service with the railroad. I have 5 1/2 years of service with no other problems of this nature, no personal injuries and no excessive absenteeism and I hope this will be taken into consideration.

O. F. Magor - Interviewed on January 31, 1986

1. Acknowledged having stayed at the South Side Manor on occasion.
2. Acknowledged having secured falsified lodging receipts for dates on which he never actually stayed at the South Side Manor.
3. Acknowledged having been reimbursed \$102.00 for lodging expense he never actually incurred.

O. F. Magor Carrier's Exhibit "E2" P-33

"Q. Were fraudulent receipts in the amount of \$102 submitted to the Company for reimbursement in your name.

A. Yes.

Q. Did you submit these receipts.

A. Yes.

* * * * *

Q. Did you charge the \$12.75 rate on each of these dates

A. Yes.

Q. When actually the rate averaged to \$4 per day.

A. Yes."

P. R. Marsh - Interviewed on January 31, 1986

1. Acknowledged having secured and having submitted fraudulent and/or inflated lodging receipts from the South Side Manor and also from the John A. Nichols establishment in Weeping Water, Nebraska.
2. Acknowledged having received reimbursement of \$165.75 for fraudulent South Side Manor receipts and \$52 for fraudulent John A. Nichols receipts.
3. Mr. Marsh made restitution for the fraudulent reimbursements he received.

P. R. Marsh Carrier's Exhibit "E2" P. 58

A. I do. I have served almost 8 years with Missouri Pacific Railroad. During that time I have gone where they ask and when they ask. Much of the time leaving my home and family to serve. This is the first conflict of any type I have had with the railroad. I accept my own responsibility for this matter and hope in the future to be able to serve this company again.

D. W. Heng Interviewed on January 22, 1986

1. Acknowledged that the lodging receipts he had submitted for reimbursement from the South Side Manor and from Alice's Room were fraudulent.

2. Acknowledged that other gang members had actually picked up the fraudulent lodging receipts and that he had paid a fee for his.
3. Indicated he had never stayed at the South Side Manor or at Alice's Rooms.
4. Indicated that he had seen the rubber stamp utilized to imprint a motel establishment's name on the dime store receipts and indicated he had actually played with the receipt in the Falls City Depot.
5. Indicated that the rubber stamp was one in which you could change the numbers to letters or letters to numbers.
6. Indicated he had seen a book of blank dime store receipts in the possession of Foreman Dennis Johnson.
7. Acknowledged that submitting such receipts was illegal.
8. Acknowledged that the fraudulent receipts for which he received reimbursement totalled \$269.75 from the South Side Manor and \$65.00 from Alice's Rooms.

D. W. Heng Carrier's Exhibit "D2" P. 44

"Q. Were fraudulent receipts submitted for reimbursement in your name.

A. Yes, they were.

* * * *

Q. Between January and August, 1985, were you aware that these receipts were being submitted in your name by some individual.

A. Yes.

Q. Did you receive reimbursement from the Company for the expenses submitted in your name.

A. Yes."

J. R. Hutchens - Interviewed on January 22, 1986

1. Acknowledged having stayed at the South Side Manor on occasion.

2. Acknowledged having submitted fraudulent lodging receipts from the South Side Manor, from Alice's Rooms, and from John A. Nichols in Weeping Water.
3. Acknowledged paying lodging expense of \$20.00 per week at the South Side Manor while submitting receipts reflecting lodging expenses of \$13.00 per day.
4. The amount of fraudulent receipts for which he received reimbursement from the south Side Manor was \$667.00 and from Alice's Rooms and John A. Nichols was \$267.75.
5. Acknowledged having picked up a bunch of receipts for the entire gang on at least one occasion.

J. R. Hutchens Carrier's Exhibit "D2"

"Q. Did you also state during your interview that you had received inflated receipts for this lodging.

A. Yes.

Q. Did you also receive inflated or fraudulent receipts from Alice's Rooms and/or John A. Nichols in Weeping Water, Nebraska.

* * * * *

A. Yes.

Q. Did you stay at either of these lodging establishments in Weeping Water, Nebraska.

A. No.

Q. Did you submit the receipts from these 3 lodging establishments for reimbursement from the Company under Award 298.

A. Some of them.

Q. Mr. Hutchens, did you receive reimbursement from the Company for receipts that you submitted.

A. Yes.

R. C. Urban - Interviewed January 21, 1986

1. Acknowledged that all of the lodging receipts he had turned in for reimbursement were fraudulent.
2. Acknowledged he had received fraudulent receipts by paying a fee into a jackpot or pool and others would pick up the receipts at the South Side Manor.
3. He acknowledged that he knew it was wrong at the time.
4. The total amount of fraudulent receipts for which reimbursement was received as \$650.25.

R. C. Urban Carrier's Exhibit "D2" PP 59 & 60

"Q. Have you ever stayed at the South Side Manor in Falls City, Nebraska.

A. No, I didn't.

* * * * *

Q. Were receipts from the South Side Manor submitted by you or in your name to the Company for reimbursement under Award 298.

A. Yes.

Q. Were you aware between January and August, 1985, these fraudulent receipts were being submitted in your name.

A. Yes.

* * * * *

Q. Did you receive reimbursement from the Company for receipts submitted in your name from the South Side Manor, a lodging establishment where you never acquired lodging.

A. Yes."

M. W. Schmidt - Interviewed January 21, 1986

1. Acknowledged he had never actually stayed at the South Side Manor.
2. Acknowledged he had received the fraudulent receipts after paying a fee and these receipts

were picked up by other employees including Mr. Hutchens.

3. Acknowledged having received reimbursement of \$328.50 for expenses never actually incurred.
4. Acknowledged that he was fully aware that the activity was illegal.

M. W. Schmidt Carrier's Exhibit "E2" P. 80

"A. I have a statement. At the time I knew it was wrong to do what I did. I feel that the error should have been caught before it got to this. After going to court and receiving a criminal record and being in this investigation, I feel I have learned a valuable lesson. I have been with the Company 9 1/2 years, and I have no lost time injuries. I've been in no trouble with the Company before and I would like to continue my job with the Railroad."

P. B. Benshoof - Interviewed January 28, 1986

1. Acknowledged having submitted inflated receipts of \$13.00 per day when he actually only paid \$20 per week.
2. Acknowledged that inasmuch as he was somewhat a regular customer at the South Side Manor he did not have to pay a fee in order to receive falsified receipts.
3. Acknowledged that turning in inflated receipts was illegal.
4. Acknowledged he had never stayed at Alice's Rooms or John A. Nichols Rooms and that these receipts were picked up by other gang members.
5. The amount of fraudulent receipts for which Mr. Benshoof received reimbursement was \$829.00 from the South Side Manor and \$114.75 from John A. Nichols and Alice's Rooms.

P. B. Benshoof Carrier's Exhibit "D2" P. 36

"Q. Is the \$20.00 a week for five nights or seven nights.

A. Five nights.

Q. If I am correct, that averages out to \$4 per night you actually paid for the room. Am I correct.

A. Yes, that would be correct.

Q. Yet you submitted receipts for \$13.00 per night for reimbursement from the Company. Is that correct.

A. Yes, it is."

D. M. Dame - Interviewed January 21, 1986

1. Acknowledged never having stayed at the South Side Manor.
2. Acknowledged having received reimbursement of \$191.25 for lodging expenses which were never incurred.

D. M. Dame Carrier's Exhibit "E2" P. 57

"A. Yes. I have 9-1/2 years seniority with the railroad. I would like to keep working with the railroad. What I have done was a bad thing and I would just like to make it up to the railroad and come back to work for them. End of statement."

M. T. White - Interviewed January 30, 1986

1. Acknowledged having stayed at the South Side Manor on certain dates.
2. Acknowledged having submitted fraudulent and inflated receipts of \$13.00 per day while he actually paid \$20.00 per week.
3. The amount of fraudulent receipts for which he received reimbursement was \$293.50.

M. T. White Carrier's Exhibit "E2" P. 59

"A. Yes sir I would like to make a statement. I would like to apologize for inconvenience and embarrassment I have caused the company. I've been ticketed and fined for my actions, I would like to continue working for the railroad and I hope that will be considered. End of statement."

F. L. Mueseler - Interviewed January 27, 1986

1. Acknowledged never having actually stayed at either the South Side Manor or John A. Nichols of Weeping Water.

2. Acknowledged having submitted fraudulent receipts from both establishments.
3. Received reimbursement of \$216.75 for fraudulent receipts from the South Side Manor and \$65.00 from John A. Nichols.

F. L. Mueseler Carrier's Exhibit "E2" P. 55

"A. I would like to make a statement. In the 12 years that I have worked for Missouri Pacific Railroad this is the first time that I have faced such disciplinary action as I now face. I would like to continue in the service of the present Carrier to the best of my abilities."

J. L. Hardenberger - Interviewed January 28, 1986

1. Acknowledged having stayed at the South Side Manor during January and February of 1985.
2. During January and February he acknowledged submitting fraudulent receipts of \$13.00 per day even though he only incurred expenses of \$20.00 per week.
3. Quit staying in the South Side Manor in March of 1985 due to a lack of heat. Receipts submitted after that date were simply fraudulent.
4. Was not charged a fee for the inflated receipts as he was a regular customer. Acknowledged others were charged \$2 per receipt.
5. Acknowledged he had seen Messrs. Hutchens, Benshoof, Clark, Johnson and Hillyard pick up fake receipts at the South Side Manor.
6. Acknowledged he was well aware that he was submitting fraudulent receipts.
7. Acknowledged receiving \$626.75 for fraudulent and/or inflated receipts from the South Side Manor and \$63.75 in fraudulent receipts from Alice's Rooms.

J. L. Hardenberger Carrier's Exhibit "D2" P. 53

"Q. Did you also advise Mr. Blankenship that you had received inflated receipts from the South Side Manor for this lodging.

A. Yes.

Q. How much were the receipts for.

A. \$65.00.

Q. For what period of time.

A. For 5 nights.

Q. How much were you paying for 5 nights lodging.

A. \$20 or \$25.

Q. Were these receipts submitted to the Company for reimbursement under Award 298.

A. Yes.

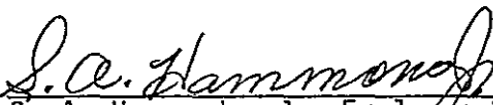
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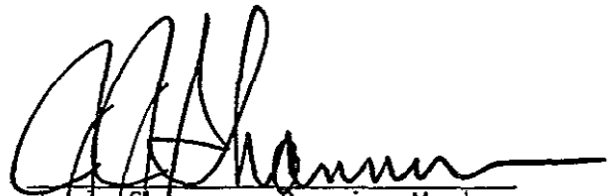
Q. Did you receive reimbursement from the Company for the receipts submitted.

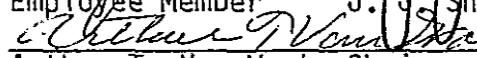
A. Yes."

There should be no question, at this point in time, that there is no relevance between what occurs in a civil court and a Carrier's disciplinary proceeding, absent, of course, any agreement to be bound thereby. It has been too long recognized by adjustment boards established under the Railway Labor Act, as amended, to require citation thereof, that decision rendered by civil or criminal court have no binding effect on disciplinary decisions rendered by the Carrier or a board of adjustment. In view of the facts the discipline is deemed most reasonable. Claims are denied.

Award: Claims denied.


S. A. Hammonds, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member