

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31859
Docket No. MW-31977
97-3-94-3-349

The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:-

(CSX Transportation, Inc. (former
(Seaboard System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. T. M. Wisecup for violation of Rule 501 in connection with the alleged misuse of the Corporation Lodging Consultants (CLC) card on March 28, 29, April 9, 10, 11, 23, 24, 25, 26, 27, May 6, 7, 20, 21, 22, 23, 24, June 17, 18, 19, 20, 21 and 22, 1993 was unreasonable and excessive [System File B-TC-8998/12(93-940) SSY].
- (2) The Claimant shall be reinstated to service with all seniority and benefits unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant held seniority as an Assistant Foreman and was assigned to various system gangs which were established in accordance with the SPG Agreement.

SPG gangs are created to perform production work throughout the entire CSXT system without regard to seniority districts. Employees assigned to such gangs are required to live away from home during their regular work periods and are provided lodging and meal allowances when away from home.

The employees assigned to such gangs are issued a credit card by Corporate Lodging Consultants, Inc. (CLC) for their use in obtaining lodging at pre-approved establishments over the entire railroad system.

The record shows that on July 12, 1993, the Claimant was charged for alleged violation of Carrier's operating Rule 501 for alleged use of the Carrier's corporate lodging card to obtain motel rooms on rest days away from his work site.

A formal Investigation was conducted on July 22, 1993, at Huntington, West Virginia. A review of the transcript reveals that there is no disagreement as to the dates in the dispute. The Claimant did not deny or take issue with the factual evidence presented by the Carrier concerning the use of the credit card on the dates in question.

The Claimant's position throughout the dispute is based on what he says is a misunderstanding of the regulations governing the use of the credit card issued for employees assigned to the system gangs.

The position of the Carrier throughout the dispute and subsequent to the Investigation was that the action of the Claimant was dishonest and fraudulent and, accordingly, in violation of Rule 501.

After a thorough review of the evidence and testimony of record, it is quite clear that the Claimant did not have a clear understanding of the rules and regulations governing the use of the Carrier's CLC credit card.

This is quite clear in his response to the question concerning the \$40.00 travel expense that employees receive in connection with end of workweek travel. He stated "I did not realize that we got the travel expense until about a month ago."

While it may be difficult to conceive that the Claimant did not understand what he was or was not entitled to under the Agreement Rules in effect, it is quite clear that the record reveals that to be the case.

Accordingly, we are of the opinion that Claimant's dismissal from service is excessive. His removal from service should clearly remind him that it is essential that he get a better understanding on what the Rules and regulations provide in connection with his work assignment. To ensure that this decision will serve its remedial purpose, we are accordingly returning the Claimant to service with all seniority and other rights unimpaired, but without pay for time lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March, 1997.