

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32454
Docket No. MW-32992
98-3-96-3-374**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman M. K. Spencer for his alleged unauthorized absence and misuse of a Corporate Lodging Card was without just and sufficient cause, in violation of the Agreement and excessive punishment [System File MKS-95-163/12 (95-0904) SSY].**
- (2) As a consequence of the violation referred to in Part (1) above, Trackman M. K. Spencer shall now be reinstated to service with seniority and all other rights unimpaired, have his record cleared of the incident and 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, a Trackman with 16 years of service, telephoned his Supervisor to report off on April 24, 1995. In doing so he explained that he had been forced to move from his home and that the circumstances surrounding the move had caused problems between he and his wife. Despite the fact that he told his Supervisor that he would report for duty the following day, he did not. Moreover, he failed to report his absence. The following day, April 26, 1995 the Claimant contacted his Supervisor and, relying on his personal problems, he asked that he be permitted vacation leave for the remainder of the week, a request which was approved. The Claimant did not report for duty, nor did he report his absence, as required on May 1, 1995 and he remained off duty without reporting his absence.

During this period the Claimant's personal problems continued and were exacerbated by his use of drugs and alcohol. Also during this period the Carrier received a report that Claimant was using his Corporate Lodging Card lodging at a Days Inn. A Carrier Special Agent investigated the matter and found Claimant and his wife staying at the hotel in question. The Claimant surrendered his credit card to the Agent and said that he and his wife were at the hotel in question while he was under treatment for drug and alcohol abuse.

Claimant was charged by letter of May 26, 1995 with an unauthorized absence from work since May 1, 1995 and with being disloyal and dishonest, in violation of Carrier Rule 501; because he misused the Corporate Lodging Card. Ultimately, the Claimant was removed for service on the same grounds.

The Organization first attacks the discharge on several procedural grounds, including an assertion that the Claimant did not have notice of the Hearing and charges against him, that the denial of his second request for a postponement while the Claimant was in treatment was arbitrary, that the Carrier relied on hearsay, and that the Conducting Officer at the Hearing on the property was also a witness and testified at the Hearing. We reject each of these contentions. With regard to any allegation that there was insufficient notice to the Claimant of the charges and the Investigation, the record developed at the Hearing clearly shows that a certified mail receipt signed by "Mike Spencer" was entered into evidence. Moreover, despite proof of notice, the Claimant failed to appear at the Hearing even after an earlier continuance. Thus, we do not believe that denying another request for a postponement and continuing the Hearing in

absentia, a right well-established by other Awards of the Board, was improper. Similarly, the use of hearsay statements by the Carrier is another well-established and permissible method of adducing evidence. Thus, no error was committed by the Carrier in this regard. The final procedural attack on the action of the Carrier relates to the conduct of the Conducting Officer at the Hearing on the property. More specifically, *the Organization objects to the fact that the Conducting Officer at the Hearing answered a question to which a witness had no knowledge.* Upon a close review of the transcript we find that in light of the record as a whole any such action by the Conducting Officer did not taint the Investigation, nor the subsequent dismissal decision.

On the merits the Organization contends that the record contains no conclusive evidence that the Claimant was guilty of the misuse of the Corporate Lodging Card and that even if the charge can be sustained his discharge was unjust and harsh in light of his many years of service and the absence of any progressive discipline. In further support of this last point, the Organization relies on the fact that just one year before his discharge the Claimant was given a commendation for saving the lives of two people from a fire.

We disagree with the Organization that the Carrier failed to support the charges levied against the Claimant. The record is clear that the Special Agent discovered the Claimant at the hotel in question and that the hotel charges were made against the Corporate Lodging Card. As noted above, the fact that these facts were established by hearsay evidence at the Hearing on the property does not render them inconclusive.

We are left then with the contention that the Carrier's failure to use progressive discipline, *especially in light of the Claimant's years of service and courageous conduct,* compels the reversal of the dismissal. However, there can be little doubt that the honesty and trustworthiness of employees, particularly those who work in the field, are traits that the Carrier must be permitted to rely upon with little question. Thus, an employee's failure to fulfill the Carrier's reliance is a dischargeable offense and progressive discipline need not be followed. In this same regard, a long record of service and an act of uncommon courage need not offset this serious misconduct if the Carrier, in the exercise of reasonable discretion free from abuse or arbitrariness, chooses to view those facts in this light. Here, the record reflects that dismissal is the ordinary penalty for violation of the Rule in question. Thus, the Carrier made its choice in a reasonable manner free from abuse or arbitrariness. Simply because others might exercise that

discretion in some other fashion does not provide a basis for the Board to reverse the dismissal decision.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.