

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32589
Docket No. MW-32043
98-3-94-3-425

The Third Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. J. D. Mirto for unauthorized use of Company provided corporate lodging facilities in his hometown on April 8 through 10, 16 through 18 and 19 through 25, 1993, while on vacation or on assigned rest days, was harsh and excessive [System File C-D-7783/12(93-685) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, 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 record evidence establishes that during the time frame relevant to the instant claim, April 1993, the Claimant was assigned to System Production Tie Gang (6XTO) in the Walbridge, Ohio area. The Claimant had in his possession a Corporate Lodging Card ("CLC") which is provided to employees to charge lodging expenses while they are working away from home.

The record evidence further establishes that the Claimant used the CLC for personal business during days he spent at a Holiday Inn at his home location of St. Joseph, Michigan. The Carrier was charged for lodging for the April dates specified in the claim, and on those days the Claimant was either on vacation, on rest or observing a holiday.

Clearly, the Claimant was guilty of dishonesty and in violation of the Carrier's Rules. Although there is a suggestion that the Claimant may have been confused because (1) he had moved his residence and (2) he did not understand that he could not charge for lodging while on rest days or vacation or observing a holiday, that suggestion/defense does not justify Claimant's clear violation of applicable Rules.

The Claimant's dishonesty was discovered by the Carrier on its own, and not because the Claimant was forthright and came forward to disclose that he had engaged in wrongdoing. Accordingly, the Claimant's offer to make restitution after being caught "red handed" is not viewed by the Board as sufficient mitigation to justify reduction of the discipline.

AWARD

Claim denied.

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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 22nd day of May 1998.