

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38223
Docket No. SG-38363
07-3-04-3-313

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(CSX Transportation, Inc

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Seaboard Coast Line):

Claim on behalf of D. A. Lewis, for all time and overtime lost since he was removed from service on June 26, 2003, until he was allowed to return to work on September 2, 2003, and also that all reference to this investigation and charges be stricken from any records kept on the Claimant by Carrier, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47 and Rule 48, when it failed to provide a fair and impartial investigation evident when it issued the harsh and excessive discipline of sixty (60) day actual suspension on the Claimant without first proving its charges in connection with an investigation held on August 13, 2003. Carrier’s File No. 15(03-0078). General Chairman’s File No. SCL-09-08-03D. BRS File Case No. 12964-SCL.”

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.

At the time of the events leading to his discipline, the Claimant was assigned as a Signal Maintainer with headquarters at Mulberry, Florida. From June 16 through June 23, 2003, he charged five days of expenses for lodging at an inn located in Bartow, Florida. At the time he occupied a point headquartered maintenance position that did not pay lodging expenses. By letter of August 4, 2003 the Claimant was notified to attend a formal Investigation in connection with his unauthorized use of his CLC card on the foregoing dates. Following the Investigation which was held on August 13, 2003, the Claimant was assessed a 60-calendar day suspension.

The Organization appealed the discipline by letter of September 8, 2003. It maintained that the Carrier had not carefully instructed the Claimant regarding the proper procedures for using the CLC card. Moreover, it noted that the Claimant offered to make immediate restitution to the Carrier once he had been made aware that the charges were not authorized. The appeal was denied on September 30, 2003. The Carrier contended that the discipline was not only justified, but under the circumstances, was quite lenient. The matter was appealed up to and including conference on the property on November 12, 2003, after which time it remained in dispute.

The Carrier points out that there is no doubt that the Claimant made unauthorized charges for lodging using the CLC card on the dates in question. The transcript of the Investigation confirms that fact. When questioned, the Claimant admitted that he was "unsure" of whether he had permission to charge his lodging on the card, and had not asked his supervisor whether such a charge was authorized. Testimony at the Investigation by Carrier officers established that there was no clear written policy or special orientation to inform employees of when they were or were not authorized to use the CLC card. Apparently, however, the Claimant gave himself the benefit of the doubt. There is no indication in the record that his supervisor was unavailable to clarify the Claimant's authority – or lack thereof – the Claimant simply did not ask.

The Board notes, however, that this is not a matter of an employee intentionally using the Carrier's funds for his personal advantage. The only time he used the CLC card was when he was staying at his work location. Moreover, in the end, the Carrier incurred no expense, because the Claimant made restitution. Under the circumstances we find the discipline of 60 days excessively harsh. There is no showing of intent to defraud the Carrier and certainly no personal gain to the Claimant. Thus, we find that the Claimant's discipline should be reduced to a 30 calendar day suspension. We would caution the Claimant severely, however, that in such matters, he would be well served to confirm that he has – or does not have – authorization to use his CLC card before doing so in the future.

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 25th day of June 2007.