

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 36**

**STATEMENT OF CLAIM:**

Appeal of the dismissal issued to Claimant L. R. Ferguson as a result of investigation held on February 11, 2003, in regards to Claimant's act of insubordination, failure to comply with instructions, violation of Carrier Operating Rule 501, and violation of Carrier Engineering Department Corporate Lodging Policy.

**FINDINGS:**

The Claimant was employed by the Carrier as an equipment operator at the time of this claim.

On January 23, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with his unauthorized single-room hotel stays for the week of January 20, 2003. The Carrier charged the Claimant with insubordination, failure to comply with instructions, violation of Carrier Operating Rule 501, and violation of Carrier Engineering Department Corporate Lodging Policy in that he failed to share a room as assigned and instructed. The Claimant was withheld from service pending the results of the investigation.

The hearing took place on February 11, 2003. On March 3, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal effective that date.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that the Claimant was guilty of violating the Carrier's rules with respect to doubling-up in motel rooms when on Carrier business. It is clear from the record that the Carrier has a Corporate Lodging Program in effect which requires that employees share a room, except for top-level supervision. In this case, the Claimant admits that he did not share a room on the nights in question.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Although the Claimant was guilty of a technical violation of the rule, the Claimant contends that he was told by the clerk when he checked in that he was the "odd man out" and would have to get a room by himself. The record also indicates that there were three other employees of the twenty-eight on the payroll who stayed in single rooms on some of those nights. Finally, the Claimant informed his supervisor that he had a letter from his doctor which gave him a medical excuse for the necessity of a single room and that it had been sent to the Carrier's medical department. The Claimant stated that the supervisor did not take

any interest in that note.

But, the most troubling aspect of this case is the fact that there were three other non-supervisory employees who the Carrier admits stayed in single rooms and who were not pulled out of service. There is no reason set forth in the record why this Claimant should have received what appears to be disparate treatment.

When the entire record is taken into consideration, plus the fact that this Claimant has been employed by the Carrier since 1977, this Board finds that it was unreasonable and arbitrary for the Carrier to dismiss the Claimant for his failure to follow the rule with respect to always sleeping in a doubled-up room. The record reveals that this Claimant had received some discipline in the past over his twenty-five years of employment, but none of it rises to the level of a dismissal for this relatively minor offense for which apparently other employees were not removed from service. Therefore, this Board orders that the Claimant shall be reinstated to service with back pay minus thirty days. The thirty-day period shall be considered a suspension for the Claimant's admitted violation of the rule. The Claimant should be informed that any future violations of this rule may lead to his discharge.

**AWARD:**

The claim is sustained in part and denied in part. The Claimant is reinstated to service with back pay minus thirty days. The thirty days of lost pay shall be considered a thirty-day disciplinary suspension for the Claimant's

PLB 6239  
Awd 36

infraction.

  

---

PETER R. MEYERS  
Neutral Member

Dated: 12/23/03