

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CSX TRANSPORTATION, INC.**

**Case No. 62**

\* \* \* \*

**Statement of Claim:**

Appeal of discipline assessed to CSXT employee J. Foster, I.D. #521326, as a result of the hearing held on Wednesday, November 23, 2005, at Martinsburg, West Virginia.

**Background:**

Claimant, with seniority dating from 1979, was working as a Production Trackman on Gang 6XC5-080. This gang was a mobile (floating) gang and was staying in corporate lodging at the Quality Inn in Martinsburg, West Virginia. Floating gangs are provided meal expenses, company-paid lodging, and travel allowances during their regularly assigned work week.

On October 30, 2005, Claimant's supervisor, R. G. Ferri, was notified of an incident that occurred the prior evening at the Martinsburg Quality Inn. Claimant was reported to have engaged in belligerent behavior toward the motel staff when he was advised that he would be charged \$5.00 per day for a microwave and a new refrigerator to be installed in

his room. Claimant, allegedly in the company of an unauthorized female guest who was occupying his room, wound up in a face-to-face altercation with three motel employees, and the Sheriff's Department ultimately was requested to provide assistance.

Upon his arrival, Berkley County Deputy Sheriff Jones went to Claimant's room at the motel, which contained several beer cans. The Sheriff instructed Claimant's female guest to leave, and eventually, following an exchange of words, Claimant also left the premises. After his departure, Deputy Jones decided to check the contents of a bag that Claimant had tossed in the trash. Jones discovered that the bag contained empty beer cans and the remnants of what appeared to be a crack cocaine pipe.

By letter dated November 7, 2005, Claimant was instructed to attend an investigation related to allegations that he had engaged in conduct unbecoming an CSXT employee, had falsely claimed travel expense at the same time he was occupying the Quality Inn at the Carrier's expense, had made unauthorized use of a corporate lodging facility, and had possessed alcoholic beverages and drug paraphernalia while occupying facilities provided by the Carrier.

Following a hearing held on November 23, 2005, which Claimant failed to attend, the Carrier found him guilty of violating CSXT Operating Rules A and G, General Regulations GR-2, and GR-2A, CSXT Safe Way Safety Rules – Rights and Responsibilities Rule 1, Substance Abuse Rule 21, Transportation Policy Statement on Harassment, and SPT's Lodging (CLC) Policy. Based upon the seriousness of the incident, and the fact that Claimant had recently served a 30-day suspension for a similar infraction, Assistant Chief Engineer D. A. Oram dismissed him from service, effective December 9, 2005.

By letter dated January 2, 2005, BMW Vice Chairman Griffith appealed the dismissal. A conference was held on February 27, 2006, and the Carrier's highest designated officer, J. H. Wilson, declined the appeal, in writing, on April 27, 2006. In a letter dated May 16, 2006, which the Carrier claims was not received until June 28, 2006, the Vice Chairman advised the Carrier that its decision was untimely, and he requested that Claimant be returned to service pursuant to Rule 25, Sections 3 and 4. On July 12, 2006, Wilson replied to Griffith's letter, rejecting his assertions as to the meaning of the Agreement and arguing that the Organization's procedural claims were untimely raised. The matter was not resolved during the handling on the property, and it now comes before this Board for adjudication.

**Contentions of the Parties**

The Organization contends that Rule 25, Section 3(c) controls this case. That provision states, in relevant part:

After the appeal has been acted upon, the employee or his union representative shall be advised not later than thirty (30) days after the hearing, in writing, of his decision....

Inasmuch as the appeal was conferenced on February 27, 2006, and the Carrier did not inform the BMW Vice Chairman in writing of its decision until April 27, 2006, the Organization submits that Rule 25, Section 3(c) was violated. Given this procedural error, it argues that its claim must be sustained on that basis alone.

The Carrier argues that Rule 25, Section 3(c) is relevant only if the employee or his organization request an appellate hearing following a decision by a local officer. In the instant case, however, the Organization did not request an appellate hearing, as contemplated by a full reading of all of the provisions of Rule 25. Rather, the

Organization requested a discussion of the appeal at a "claims conference." Inasmuch as no request for an appellate hearing was made, the Carrier asserts that Rule 25, Section 3(c) was irrelevant. As to the merits of the dispute, the Carrier submits that Claimant violated significant operating rules and engaged in behavior that more than justified his dismissal from service.

### **Findings**

The parties have raised significant procedural issues on which they have focused much argumentation. However, the Record is confused, and the parties' arguments were not perfected sufficiently for this Board to render a proper precedential decision on the potentially important procedural questions that have been raised regarding the meaning of Rule 25.

Having discussed at length the procedural issues and the deficiencies in the Record with respect to these issues, this Board had decided to make no ruling on either party's procedural claims. It is understood that neither party has waived its position as to the meaning of Rule 25. The Board merely determines that this Record does not permit a proper determination in regard to the interpretation and application of Rule 25, and that this case, therefore, will be decided on its merits.

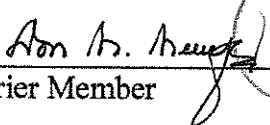
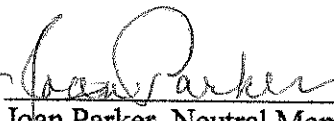
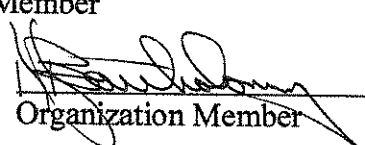
Turning now to the substantive charges involved in this claim, the Board finds that Claimant engaged in serious misconduct and that the Carrier had just cause to terminate his employment. Claimant knowingly misused his CLC card and falsely claimed a weekend travel allowance on the weekend of October 28-30, 2005, when he was occupying a motel room paid for by the Carrier. He compounded this dishonest conduct by having an unauthorized companion in his room with him. There was clear evidence

that he had been drinking and using drugs in his motel room, and he aggravated this inappropriate behavior by provoking belligerent confrontations with the motel staff. In fact, his behavior was so aggressive that one of the motel managers needed to request the assistance of the local authorities in evicting Claimant and his female friend.

Based upon the unrefuted evidence in the Record, there is no doubt that Claimant was guilty of the charges that were brought against him. Moreover, on April 25, 2005, just six months prior to the instant matter, Claimant waived his right to a hearing and accepted a thirty calendar day suspension for almost identical misconduct involving the Carrier's CLC policy and Claimant's having unauthorized guests in a lodging facility provided by CSXT. Claimant has demonstrated that he is untrustworthy and that he has little respect for his employer's rules. His dismissal was appropriate and in accordance with both arbitral precedent and Part III of the Carrier's Individual Development and Personal Accountability Policy.

**Award**

The claim is denied.

<p>          _____          Carrier Member</p> <p>Dated: <u>April 23, 2007</u></p>	<p>          _____          Joan Parker, Neutral Member</p> <p>          _____          Organization Member</p> <p>Dated: _____</p>
---	--