

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF	)	
MAINTENANCE OF WAY EMPLOYEES	)	
DIVISION – IBT RAIL CONFERENCE	)	CASE NO. 21
vs.	)	AWARD NO. 21
	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM:

Claim of the System Brotherhood that:

1. The fifteen (15) day suspension imposed upon Vehicle Operator B.E. Parker for alleged violation of CSX Operating Rules General Rule A and General Regulations 1 and 2 in connection with unauthorized CLC stays is unjust, unwarranted and in violation of the Agreement [System File Appeal-BEParker/12(07-0675)].
2. As a consequence of the violation referred to in Part (1) above, Mr. Parker shall “. . . be immediately reinstated to active service, and that he be compensated for all earning opportunities and other benefits deprived him. We are also requesting that the Carrier reimburse Mr. Parker for any of the \$695.95, that it acquired from him.***”

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, B.E. Parker, has been employed by the Carrier since 1994. On March 7, 2007, he was charged as follows:

You are instructed to attend a formal investigation . . . to determine the facts and place your responsibility, if any, in connection with the unauthorized CLC stays on November 2, 2006, December 15 and 16, 2006. Also in question are CLC stay incidents on September 25, 27, 28 and 29 where you checked into two motels at the same time.

In connection with the above, you are charged with conduct unbecoming an employee and failure to follow instructions.

Following the investigation, the Carrier found Claimant guilty of the charges and assessed him a 10-day actual suspension which, in addition to a previous five-day overhead suspension, resulted in a 15-calendar day suspension.

Emil Marrero, Carrier Engineer of Track at its Jacksonville, Florida Division, testified at the investigation that Claimant was in his employ on the relevant dates. He stated that the Florida Department of Transportation had forwarded him disputed bills for verification and explanation, and he determined that Claimant had two hotel stays during the same four-day period, and had stayed in corporate lodging on a vacation day and on a weekend when he was not working. Mr. Marrero explained that with respect to the double-stay incident, Claimant had checked into a hotel in West Palm Beach, but because of material problems his crew was instructed to move to Hialeah. However, Claimant never checked out of the first hotel, as he acknowledged at the investigation. He contended that the situation was chaotic and he had simply forgotten. He had no explanation for the other occasions, beyond stating that when he was not working he would go home.

The Carrier first asserts that all of the Claimant's procedural rights were fully protected and the hearing was conducted in a fair and impartial manner. On the merits, the Carrier asserts that it demonstrated, with substantial evidence, that Claimant is guilty of improperly using Carrier-provided lodging. The Carrier notes that its records show that Claimant was either on paid leave or rest days, or was checked into two hotels at once, on the days in question. Moreover, the Carrier notes, Claimant admitted that he was checked into two hotels at once, and his denials that he improperly used the lodging on other occasions should not be credited over the Carrier's testimony and documentary evidence.

Given Claimant's guilt, the Carrier asserts that the discipline was fully justified. Claimant's conduct, the Carrier asserts, amounts to theft, which can justify dismissal for even a first offense. The Carrier points out that Claimant previously had a five-day overhead suspension for a similar offense, so the penalty here, 10 days actual suspension plus the activation of the overhead suspension, cannot be deemed inappropriate or excessive. Thus, the Carrier urges that the claim be denied.

The Organization asserts that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. The Organization notes that the Carrier based its decision to assess a 15 day suspension, and the restitution of \$695.95, on a hotel stay audit conducted in about January 2007, which supposedly revealed that Claimant engaged in unauthorized use of Company-provided lodging on November 2, and December 15 and 16, 2006, and that Claimant was checked into two motels at the same time on September 26, 27, 28 and 29, 2006. However, the Organization urges, the record evidence does not support these charges, and the claim should be sustained.

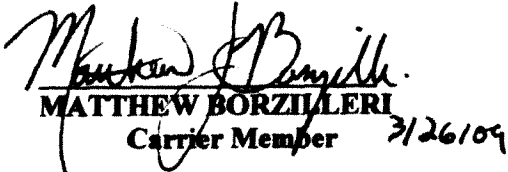
The Board has carefully reviewed the record in its entirety, and finds that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. Claimant admitted that he failed to check out of one hotel when he was ordered to a new location, exceedingly negligent conduct at best. He had no defense to the Carrier's records establishing unauthorized stays on other occasions. Thus, his guilt has been proven by substantial evidence.

Given that Claimant's conduct borders on theft, the 15-day suspension imposed upon him by the Carrier is lenient and will not be disturbed by this Board.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member 3/26/09


TIMOTHY KREKE 3-26-09
Organization Member

Dated this 26th day of March, 2009.