

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYEES' DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated November 9, 2007, Jonathan L. Brown ("the Claimant") was instructed by an official of the Carrier to attend a formal Investigation on November 19, 2007, "to determine the facts and place your responsibility, if any, in connection with information that I received from special agent Jimmy Carden on November 8, 2007, regarding your unauthorized and inappropriate use of the Corporate Lodging Consultants (CLC) 'Check Inn' card assigned to you between September 20, 2007 and October 10, 2007." The letter stated that the Claimant was "charged with conduct unbecoming an employee, unauthorized use of your CLC card, theft and insubordination. Your actions in connection with the above matter," the letter continued, "appear to be in violation of, but not limited to CSX Operating Rules General Rule A and General Regulations GR-2 and GR-2A." The letter stated that the Claimant would be withheld from service pending the outcome of the Investigation. At the Organization's request the Investigation was postponed and was held on January 22, 2008, in Louisville, Kentucky.

CITED RULES AND REGULATIONS**General Rules**

A. Employees must know and obey rules and special instructions that relate to their duties. When in doubt as to the meaning and application of any rule or instruction, employees must ask their supervising officer for clarification.

General Regulations

GR-2. All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:

1. Use boisterous, profane, or vulgar language,
2. Enter into altercations while on duty or on company property,
3. Play practical jokes or engage in horseplay while on duty or while on company property,
4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless, or incompetent,
5. Willfully neglect their duty,
6. Endanger life or property,
7. Make any false statements, or
8. Conceal facts concerning matters under investigation.

GR-2A. Criminal conduct which may damage the company's reputation is prohibited. Criminal conduct which indicates a potential danger to the company, its employees, its customer or the public is prohibited.

FINDINGS:

Public Law Board No. 7120, 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.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant began his employment as a Basic Force Trackman on July 16, 2007. His first week of employment he attended training classes given by the Carrier's Redi Center in Atlanta, Georgia. He was given a corporate lodging card, called Check INN Card, to use for payment for his lodging in Atlanta. He and the other trainees were given a copy of a document headed Instructions—Corporate Lodging Program, and it was gone over with them. One of the instructions states, "Check INN cards are authorized for the sole use of the employee whose name and identification number are embossed on the card."

A Special Agent employed by the Carrier was assigned to investigate alleged abuse of his corporate lodging card by the Claimant in the Birmingham, Alabama, area. The card had been used to pay for lodging in and around Birmingham, Alabama, at various motels during the period September 18, through October 19, 2007. On most of the dates the card had been used to pay for lodging at multiple establishments for the same night. For example, four different motels submitted bills to the Carrier's travel consultant for payment for September 22, 2007. Nine motels submitted lodging charges for September 26, 2007, ten, for September 30th; ten, for October 2nd, seven, for October 9th. For every one of the dates between September 18 and October 19, 2007, there was at least one lodging bill charged to the Claimant's corporate lodging card that was submitted for payment by the Carrier. None of the charges was authorized. The Claimant was not even assigned to work in the Birmingham area for the period in question. His last day of actual work for the Carrier was September 14, 2007.

The Carrier's Special Agent had left word with the Claimant's father that he wanted to speak with the Claimant, and the Claimant called the Special Agent on October 21, 2007. The Claimant admitted to the Special Agent that he had misused his corporate

lodging card at hotels or motels in the Birmingham area. He said that he was "high on drugs" during that time and now wanted to set things right. He said that he had a drug problem and needed help. The Special Agent advised the Claimant to make contact with the Carrier's Employee Assistance Program and his supervisor. The Claimant called back the next day and said that he was under a physician's care and would be entering a treatment facility.

The Claimant testified at the Investigation. He admitted that he used his Carrier corporate lodging card in September and October to incur lodging charges for motel rooms in the Birmingham, Alabama, area. He acknowledged that he did not have authorization from the Carrier to use the lodging card for any of the rooms. He was shown a summary of his card usage on the dates in question and asked for what purpose he would have checked into more than one room per night. He stated, "I was depressed and I got up with some strangers and got to partying around, and had some; a lot of problems, and I just got confused and I just really can't, that's all the best way I can explain it. I can't remember a lot of the stuff that happened. I know, I remember renting the rooms, and going all over the place, and that's what happened." Although one of the persons who had used a motel room charged to the Claimant's corporate lodging card told the Carrier's travel consultant that she had paid the Claimant \$250 for several days' use of the room, the Claimant testified, "That was false. That is false." The Claimant insisted that he got no money from anybody else who used any of the motel rooms charged to his Carrier corporate lodging card.

The Claimant testified that he is sorry for what he did. "I was not in my normal state of mind," he stated. He has offered to make restitution for the unauthorized charges to the Carrier. In a statement in his own behalf at the conclusion of the hearing the

Claimant apologized to the Carrier and its employees. He stated that at the time he was out of his mind. Since then, however, the Claimant stated, he has received treatment in a rehabilitation center and is following all of the guidelines given to him. "I think that I can return as a safe and productive employee," the Claimant asserted. "I'll be willing to do anything the company asks of me to keep my job," he averred, "or to help make right the wrongs, the wrong things I've done."

By letter dated February 11, 2008, from the Division Engineer, Midwest Region Engineering Department, the Carrier notified the Claimant that a review of the transcript and exhibits of the Investigation "confirm that the charges brought against you in the initial letter of charge dated November 9, 2007, have been proven." Because of "the seriousness of the charges," the letter stated, "discipline assessed in this case is your immediate dismissal from the service of CSX Transportation and forfeiture of all rights and seniority."

The Organization has raised two procedural issues. In a letter to the Carrier dated November 16, 2007, the Organization cited Rule 24 (i) of the Agreement and requested "that any statements that may be introduced by the Carrier be provided for our review before the investigation in order for us to attempt to prepare a proper defense" The letter also stated, "This would be a unfair . . . investigation in that we will be unable to prepare a proper defense for the lack of proper witnesses and being able to review statements or documents the Carrier may be placing into the Transcript." Further the Organization requested "a list of witnesses that the Carrier is bringing be provided for us to determine what information is needed for development of a Fair Investigation."

The Carrier by its Director Labor Relations contends that there is no requirement with Rule 24 (i) to provide the kind of pre-investigation discovery that the Organization

asked for in its letter. In support of its position the Carrier cites a decision issued by Public Law Board No. 7008, Award No. 16, dated November 2, 2007, involving these same two parties. In that case the Organization contended that the claimant was denied due process because the Carrier “did not provide us our request for management records for the purpose of researching issues related to this investigation in order for us to not only prepare, but also provide [the claimant] with a fair and impartial hearing.” Public Law Board No. 7008 held, “On the threshold issue of due process and ‘pre-investigation discovery’, the language in Rule 24 (i) does not require the Carrier to provide summaries of testimony or investigative materials to the Organization prior to hearing. Consequently, we find no evidence of a fatal due process violation on this record.”

In the absence of contrary authority cited by the Organization this Board will not find “a fatal due process violation” in the failure of the Carrier to provide any of the materials requested by Organization for review prior to the investigatory hearing. This Board also observes that the Claimant was not prejudiced by the denial of the requested materials since, prior to the hearing, he had admitted his guilt of the charges to the Special Agent who was investigating the Claimant’s use of his corporate lodging card, and he again admitted his guilt at the hearing.

At the Investigation the Organization objected to the hearing and requested that it be closed because the Carrier official who served as Hearing Officer in the Investigation had, prior to the Investigation, provided information regarding the Claimant’s alleged misuse of his credit card to a Special Agent who was investigating whether there was a basis to place charges against the Claimant. The Carrier contends that there is nothing in Rule 25 that renders someone who has engaged in such activities ineligible to serve as a Hearing Officer and cites Second Division Award No. 12168 in support of its position.

The Board finds that the Agreement does not prohibit a Carrier official with prior knowledge of the case because of his participation in a preliminary investigation prior to the hearing from serving as Hearing Officer in the official Investigation so long as that person does not give evidence as a witness in the Investigation or make a determination of a fact or an issue based on personal knowledge rather than on evidence adduced in the Investigation. See Third Division Award No. 38957.

This Board has carefully scrutinized the transcript and has determined that the Claimant was given a fair hearing and that there is no evidence that the Hearing Officer or the decision-maker was biased or prejudiced against the Claimant or that there was a conflict of interest on the part of either. The decision in the case was not made by the Hearing Officer, whose only role was to make sure that a full and complete record was obtained and that the hearing was fairly conducted. Our examination of the record satisfies us that the Claimant and the Organization were able to present all relevant evidence they wished to, to cross-examine the witnesses, and to object to any evidence offered and have the objection noted in the record. The Claimant and the Organization were both permitted to make a statement or argument at the conclusion of the presentation of evidence. The Board finds no basis for disturbing the Carrier's decision in this case on procedural grounds.

On the merits the Board finds no basis for setting aside or modifying the discipline administered by the Carrier. The evidence amply established, and the Claimant admitted, unauthorized use of his Carrier corporate lodging card on multiple occasions over a period of weeks so as to accumulate unlawful charges against the Carrier's account in the amount of many hundreds of dollars. This was dishonest conduct and theft of company property. Such conduct is commonly accepted to be just cause for discharge. Although

the Claimant is to be commended for trying to take control of his life and enrolling in a rehabilitation program to treat his admitted drug problem, the Board must conclude that, under all of the circumstances, including the short service of the Claimant, the Carrier's determination of the penalty, after a fair hearing, was within what one labor relations scholar has called "the reasonable range of discretion which management must have in order to discharge its primary responsibility for safe and efficient operations." The Board is persuaded that management's determination should not be disturbed.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
June 26, 2008