

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated March 17, 2008, a Manager of the Carrier's SPT Teams notified Paul Ray Kidd (" the Claimant") to attend a formal investigation on March 27, 2008, "to determine the facts and place your responsibility, if any, in connection with information that I received on March 3, 2008, that indicates that you stayed in a CLC facility, at the Carrier's expense, on Saturday, January 19, 2008, and Saturday, February 2, 2008, in addition to being paid the SPG weekend travel allowance." The letter stated that the Claimant was "charged with conduct unbecoming a CSX employee, falsifying an CSX timesheet, fraud and possible violations of, but not limited to, CSXT Operating Rules General Rule A; General Regulation GR-2, as well as CSX Code of Ethics." The letter further stated that the Claimant would be withheld from service pending the outcome of the hearing.

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.

Code of Ethics

...

Your Responsibilities

- Comply with all provisions of this Code of Ethics.
- Seek guidance if you have questions about specific compliance issues or proper conduct.
- Promptly raise concerns or report suspected violations of this Code of Ethics to a supervisor or the CSX Ethics Information Hotline.

...

Responsible Use of Company Assets

All of us are responsible for using good judgment to safeguard the Company's assets from misuse or waste. You should respect Company property and use Company assets, including computers and related information technology and Company-owned vehicles, according to Company policies. Theft, carelessness,

misuse, and waste of Company property have a direct impact on profitability.

...

Books, Records and Financial Reporting

...

You must help ensure that any business information you report is accurate, complete, and timely. This requirement includes accurate recording of costs, revenues, bills, travel expenses, payroll and benefits records, regulatory data, and other business information. You must also be sure that any document you prepare or sign is correct and truthful. Providing false or misleading records or altering records is never appropriate and can be a serious violation of law.

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 with the Carrier on August 1, 1979. Most of his employment with the Carrier has been as a Machine Operator and a Trackman. At the time of his dismissal he was working as a foreman with the T&S 3 group. T&S 3 is a group of approximately 69 employees who travel from subdivision to subdivision to install crossties and surface track as needed. The group will remain at a location from one to four weeks. T&S 3 is headed by a Manager, who supervises three foremen and

four assistant foremen. The Claimant served as one of the foremen of a switch tie team that was part of the T&S 3 group.

If a member of the group works on a Saturday or Sunday, the Carrier is responsible to provide lodging for the employee at the Carrier's expense. When employees in the group are not scheduled to work on the weekend, they are permitted to go home and provided travel expenses in accordance with an amount stated in the collective bargaining agreement for that purpose. If the employee chooses to remain at the work site, the Carrier will provide lodging at its expense, but the employee is not entitled to receive any travel expenses. Employees are given a travel card to charge their authorized lodging expenses to the Carrier.

On March 3, 2008, the Internal Audit Group called the Manager of T&S 3 to report that the Claimant had charged a motel room to the Carrier on two Saturdays for which he also claimed travel expenses, January 19, and February 2, 2008. He had used his Carrier-issued travel card to pay for his lodging at the Quality Inn in Greenville, North Carolina, for each of those dates. The Claimant did not work on either Saturday. He was therefore required either to pay for the room out of his own pocket or, if he charged the room to the Carrier, to forego receipt of any travel expenses for the weekends involved.

The Timekeeper for the T&S 3 group was called as a witness to testify at the hearing. He stated that the time sheet provided by the employee does not have a space on it for the employee to indicate whether he is or is not entitled to expenses for the weekend. The Timekeeper will allow travel expenses for the employee unless the employee tells the Timekeeper that he will be using the Carrier-provided lodging on Saturday. It would be easier, the Timekeeper stated, if the employee stated in writing on the time sheet whether or not he was entitled to a travel allowance instead of orally

informing him that he was staying over for the weekend. That would alleviate doubts or misunderstandings, the Timekeeper testified.

The Timekeeper testified that the Claimant did not inform him that he was staying the weekend at the motel on the two Saturdays in question. On other weekends, the Timekeeper stated, the Claimant has informed him that he was staying at Carrier-provided lodging, and on those occasions the Timekeeper has taken the travel allowance off the time sheet. For the two weeks in issue, according to the Timekeeper, the Claimant did not inform the Timekeeper that he was overpaid. There are 69 employees in the T&S 3 group for whom he keeps time, the Timekeeper stated. It is possible with the number of people in the group, the Timekeeper stated, that the Claimant told him that he was staying over and that "for whatever reason, it just didn't get transmitted."

On redirect examination the Timekeeper testified that he has been a timekeeper for seven years and that during that time there were several instances that he put in a travel allowance that should not have been entered. On those occasions, the Timekeeper explained, he had not been informed that the employee stayed on the Carrier's travel card until after he had already submitted the time. Later the employee came to him and informed him that he (the employee) had stayed the weekend. The Claimant, the Timekeeper testified, never came to him and requested to remove the travel allowance.

After he completes the time sheets, the Timekeeper testified, he provides each employee a copy of his own time sheet before he submits them to Payroll. The time sheets are given to the respective foremen on Tuesday morning for distribution to the employees under them for review. Employees are paid every two weeks, but time sheets are submitted to Payroll every week. The time sheets given to employees for review on Tuesdays show whether or not they have been credited with a travel allowance.

The Claimant gave the following testimony. When he was foreman, six or seven men worked for him. Every Monday morning the Timekeeper handed him time sheets for his team and took his previous time sheets. On the time sheets there would be the employee's name and rate of pay. The Claimant would put in the number of hours worked and overtime, vacation, and holiday hours for each of his employees. The Claimant did not make any entries on the time sheet regarding expenses. The Timekeeper would put expenses and travel time on the time sheet. The Claimant had nothing to do with that.

According to the Claimant each employee tells the Timekeeper whether he is staying over on the Carrier's travel card and therefore not entitled to expenses. For example, the Claimant stated, "I tell him, 'I'm staying on the card, Joe, and I'm not entitled to expense.'" On January 2nd and February 19th, the Claimant testified, he stayed at the work site in Greenville, North Carolina, because it was too far to travel to his home in Kentucky. One is allowed to stay on his Carrier-provided travel card, but then forfeits his travel money, which Claimant believed to be around \$130. On both of the days in issue, the Claimant testified, he told the Timekeeper that he was staying. The Claimant surmised that because the Timekeeper has "about 70 men he's got to deal with, he must have misunderstood me or overlooked the dates, 'cause I did tell him I was staying."

The Claimant acknowledged that there was an overpayment to him but stated that he did not become aware of this until he was pulled out of service on March 3rd or 4th. "I've never looked at my check stubs," the Claimant testified. He would not knowingly falsify a time sheet, the Claimant stated, or claim expenses that he was not entitled to. He had no "intention to steal off this Company," the Claimant insisted.

On cross-examination the Claimant acknowledged that the Timekeeper hands out

the time sheets to the employees on Tuesdays for review before they are submitted. Those sheets show travel pay. When the Timekeeper hands them out, the Claimant stated, he (the Claimant) reviews them. Sometimes, however, according to the Claimant, the computer is down, and the Timekeeper does not distribute them to be looked over. The Claimant testified that he cannot recall whether the Timekeeper gave him the time sheets to review for the two weeks in question. With regard to each of the Saturdays in question, the Claimant stated, he worked the previous Friday. A lot of the men from Kentucky stayed over in the motel for the weekend, the Claimant testified, giving the names of those who stayed over.

Recalled as a witness, the Timekeeper testified that the Claimant never came to him with the complaint that he did not get a copy of his time. He acknowledged that there were times in his career as a Timekeeper where, because the computer's printer was down or unavailable, he was not able to distribute time sheets. In the past two months preceding the hearing, he testified, he did not miss a Tuesday passing out the time sheets for review. The Organization noted that Rule 30 (3) of the collective bargaining agreement provides a procedure for employees who have received overpayments in their pay checks to reimburse the Carrier by deductions from their paychecks over a period of time. The Claimant expressed the willingness to reimburse the Carrier for any overpayment that he received.

It is the position of the Carrier that the Claimant intentionally omitted to notify the Timekeeper that he was staying over the two Saturdays in issue and that he knowingly received an overpayment in his paycheck each week which he failed to report or pay back to the Carrier. The Claimant testified that he did notify the Carrier that he was staying over on his travel card and not entitled to expenses for the weekends in question.

The Board finds it very suspicious that for two different Saturdays, within three weeks of each other, the Claimant, although most probably given his time sheet for review, would not have noticed that he was being paid travel expenses to which he was not entitled. The same is true of the fact that after receiving his paychecks for those weeks, he did not report an overpayment. Nevertheless in view of the Claimant's 28 years of service and the absence of any evidence that he was previously involved in any act of dishonesty toward the Carrier, the Board will give the Claimant the benefit of the doubt. Some credence to the Claimant's protestation of innocence is also found in the fact that in this computer age, where it is so easy to cross-check records to ascertain that no employee who is paid a travel allowance has also charged a hotel room to the Carrier, any employee who cheats regarding his travel allowance should know that he is likely to be caught. It therefore would have been especially foolhardy for the Claimant to have intentionally tried to cheat the Carrier out of a travel allowance. For these reasons the Claimant will be reinstated. Cf. Awards Nos. 37678 and 39020.


However, even giving the Claimant the benefit of the doubt regarding his honesty, he plainly acted with the utmost carelessness in not noticing the overpayment on either his time sheet or his paycheck. He will not be awarded any backpay or back benefits. He should not expect to be given the benefit of the doubt should there be a further instance of a wage or expense overpayment in the future not reported by him to the Timekeeper or to the appropriate manager.

A W A R D

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 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.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
July 8, 2008