

AWARD NO. 131

Case No. 131

Organization File No. D72907011

Carrier File No. 2011-103219

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's dismissal of employee G. Stewart for the alleged failure to properly and safely perform the responsibilities of his position, carelessness and possible violations of, but not limited to, CSXT Operating Rules - General Regulations GR-2 and CSX Pro card Policy in connection with his alleged thirteen (13) unauthorized stays between June 18, 2010 and September 14, 2010, resulting in twelve-hundred dollars (\$1,200) of damages to CSX is on the basis of unproven charges, arbitrary, capricious and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, the Claimant shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was first employed by the Carrier on April 17, 1979. At all times relevant to this dispute, he was assigned as a Production Foreman, although he had been removed from service for medical reasons on November 1, 2010. Shortly after his removal, Roadmaster J. W. Phares received

an inquiry from a company lodging facility concerning unpaid charges for movie rentals and other miscellaneous items charged by Claimant. Phares then checked Claimant's lodging records and determined that he had thirteen hotel stays between June 18 and September 14, 2010, despite the fact that Claimant had received travel allowances for those dates. These travel allowances were based upon Claimant returning home on the weekends because lodging was not authorized.

By notice dated November 16, 2010, Claimant was directed to attend a formal investigation at which he was charged with thirteen unauthorized hotel stays. He was also informed that he was being withheld from service pending the investigation. The investigation was scheduled for December 3, 2010. A letter dated November 30, 2010 confirmed that the investigation was postponed until January 3, 2011 by mutual agreement. By letter dated December 30, 2010, Claimant was advised that the investigation was again postponed by mutual agreement until he was found to be medically qualified to attend the investigation. This letter further directed Claimant to complete a Medical Questionnaire no later than January 21, 2011, and every 45 days thereafter until he was able to return to work. The letter, in bold face type, stated, "Your failure to submit this documentation to the Medical Department will result in this investigation being rescheduled and may subject you to additional handling under the IDPAP." Postal Service records indicate this letter was received by Claimant on January 4, 2011.

Claimant submitted the required medical documentation in January 2011, but nothing thereafter. Consequently, on March 9, 2011, the Carrier issued a notice advising that the investigation would be held on March 23, 2011. On March 23, 2011, at the request of the Organization, it was again rescheduled to April 21, 2011. Again at the request of the Organization, it was resched-

uled on April 21, 2011 until May 25, 2011. According to the Carrier, no further request for a postponement was received. Consequently, the investigation was convened on May 25, 2011. Neither Claimant nor his representative was present and, after determining they were not on the premises and that they could not be contacted by phone, it was conducted in their absence. Following the investigation, Claimant was dismissed from service.

The Organization asserts it had sent another request for a postponement on May 9, 2011, asking that the hearing be rescheduled for June 30, 2011 “due to unforeseen scheduling problems.” It explained its appeal of the discipline that the “organization was unable to attend the Hearing on May 25, 2011 due to our National meetings and **ALL** of the Organization officers were in attendance of this meeting.” The Carrier denies it had received this request.

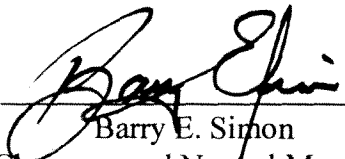
We do not find fault in the Carrier conducting the investigation *in absentia*. Claimant was on notice as to the scheduled date, time and location of the hearing. The Carrier is under no obligation to further postpone the investigation when the employee charged is not in attendance. We further reject the Organization’s contention that Claimant was not physically able to attend the investigation. We note that he had not provided any additional medical documentation to suggest that he continued to suffer from some disability. The December 30, 2010 postponement notice made it clear that his failure to provide such documentation would result in the investigation being scheduled. Further, none of the Organization’s requests for postponement cited Claimant’s disability as a basis for the request. In fact, the last postponement requested by the Organization was based simply upon a scheduling conflict. Even the request the Organization says was sent on May 9, 2011 referred only to a scheduling conflict.

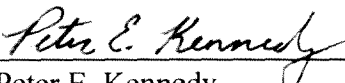
The Carrier has denied receipt of the May 9, 2011 request. The burden is upon the Organization, therefore, to prove that it was sent. In this regard, it has offered nothing other than a copy of the letter. The letter was not sent by any means that would generate a tracking record. We find, therefore, that the Organization has not met its burden of proof. In reaching this conclusion, we have given consideration to the fact that the Organization had specifically requested a postponement to May 25, 2011, which it now says was the date of the national meeting. This calls into question the Organization's assertion that there was an unforeseen scheduling conflict. Furthermore, the Carrier had been diligent in sending acknowledgments of all the requests for postponement. When it did not receive such an acknowledgment for its May 9 request, the Organization should have been on notice that it might not have been received. Instead, it did not raise a question until the appeal of the discipline. Notwithstanding this, the Carrier was privileged to deny the request after granting as many postponements as it had. It is noted that the request made no mention of a national meeting of the Organization. The Organization's argument for a postponement might have been stronger had the request cited the specific reason rather than a vague mention of a scheduling conflict.

We reject the Organization's contention that the investigation was untimely simply because it covered events as early as June 2010. The Carrier's time limit for conducting the investigation began when it came to management's attention that the dates Claimant used the lodging facility coincided with his receiving a travel allowance. The mere receipt of the lodging facility records does not obligate the Carrier to conduct an audit of every employee to determine if there might have been travel allowance payments. That obligation arises only when the Carrier has reason to suspect that there might have been a violation of its rules.

Turning to the merits, we find that there was substantial evidence to support the Carrier's charge that Claimant was receiving a travel allowance at the same time he was registered in hotels at the Carrier's expense. He was entitled to one or the other, not both. Claimant's conduct constituted an act of dishonesty that warranted his dismissal, notwithstanding his long term of service.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Peter E. Kennedy
Employee Member


Robert Paszta
Carrier Member

Dated: January 7, 2013
Arlington Heights, Illinois