

PUBLIC LAW BOARD NO. 6059

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION)

VS )

CSX TRANSPORTATION, INC. )

NMB CASE NO. 47

AWARD NO. 47

STATEMENT OF CLAIM:

Request of J. M. Geisler (099399) for removal of unfavorable entry from his service record and paid for time lost (60 days actual suspension).

Request of Q. F. Rollins (519079) for removal of unfavorable entry from his service and paid for time lost (40 days actual suspension).

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved. The parties to this dispute were given due notice of hearing thereon.

The claimants here involved were summoned to a formal investigation on the following charges:

- "1) Insubordination.
- 2) Concealing facts (concerning matters under investigation).
- 3) Participating in unauthorized activities while staying at CSX authorized lodging facility.
- 4) Possible violation of Operating Rule G and Safety Rule 21 while you were staying at the Crislip Motel, located on U.S. 50, Grafton, WV, before and after 1400 hours on Tuesday, September 21, 1999."

Following the investigation Carrier found there was not sufficient evidence to support the charges of insubordination and concealing facts, however, it did find claimants guilty of the other charges against them. Claimant Geisler, whose charge included harassment of a hotel maid, was assessed a 60 day actual suspension from service as discipline. Claimant Rollins was assessed a 40 day suspension from service as discipline.

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This Board has had the opportunity to thoroughly review the transcript of hearing together with all other documents submitted by the parties.

The record is explicitly clear that both claimants had been drinking alcoholic beverages while staying at the company provided lodging facility at Grafton, WV. In fact, both claimants admitted this fact during the investigation. This admission of guilt by the claimants is more than sufficient to offset the alleged procedural arguments raised by the Organization during handling of the dispute on the property and before this Board.

While the hotel maid did not appear as a witness at the investigation, she did furnish a written statement that claimant, while carrying a beer can, tried to talk her into entering his room. During the investigation claimant did not deny that he spoke to the maid involved. During the investigation claimant's representative objected to the fact the maid was not physically present at the investigation so that she could be cross examined by both claimant and his representative.

It has long been held by many prior awards from the National Railroad Adjustment Board and other tribunals established under the Railway Labor Act that the absence of a witness under circumstances such as those here involved is not a fatal flaw in the proceedings; i.e., the Carrier did not have authority to subpoena the maid to attend. Consequently the Board here must hold that the absence of the maid is not sufficiently egregious to warrant a decision claimant was denied a fair and impartial investigation.

In addition, the Organization has argued there was a third party involved who admitted to drinking some beer, who was later that day called and reported for work on his assignment. This employee was allegedly treated differently than the claimants in this dispute; i.e., he was permitted to enter the Employees Assistance Program instead of being subjected to an investigation and discipline. The Board has considered this Organization argument but does not believe the actions of the third employee can be used to justify a decision that claimants were treated sufficiently different to warrant a conclusion that the discipline administered claimants could be considered discrimination.

Based on the record in its entirety, this Board finds that Carrier has produced substantial evidence to justify its decision that claimants were guilty of some of the charges against them. The discipline administered cannot be held to be harsh or excessive.

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AWARD

Claim denied.

F. T. Lynch  
F. T. Lynch, Neutral Chairman

C. J. Wexel  
C. J. Wexel, Carrier Member

J. L. Mateer  
J. L. Mateer, Employee Member

Award date: September 10, 2001