

PUBLIC LAW BOARD NO. 7529

Case No. 125

PARTIES
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File No. D10904016

VS.

CSX Transportation, Inc.
Carrier File: 2016-203410

Arbitrator: Sherwood Malamud

FINDINGS

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute.

Under date of March 8, 2016, Claimant A.W. Eagen signed an attachment A expedited discipline handling form. Through this document, Claimant Eagen elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

The Carrier hired A.W. Eagen on August 8, 2005. He held a Bridge Inspector classification at the time of his dismissal effective March 9, 2016. The Carrier issued a notification letter dated October 9, 2015 charging that Claimant misused his Corporate Lodging Card on May 3, 25, 26 and August 16, 2015. Assistant Division Engineer Hoopingarner directed Claimant to report for an investigatory hearing on October 22, 2015.

After four postponements, an investigatory hearing was held on February 18, 2016. Claimant failed to appear. The Organization's representative attempted to contact Claimant on February 18. When the representative failed to contact Claimant, he objected to proceeding any further. The Representative argued it denied Claimant a fair hearing. Nonetheless, the Carrier's Hearing Officer proceeded with the hearing after Assistant Division Engineer Hoopingarner attempted to call Claimant. Hoopingarner did so on the record. The Hearing Officer then provided Claimant with the time and opportunity to call Hoopingarner's phone. Claimant failed to contact the Assistant Division Engineer or the Organization's representative during balance of the hearing.

The record established through the testimony and introduction of exhibits through ADA

Hoopingarner is as follows. On May 3, 2015, Claimant stayed at a Quality Inn Motel in Prattville Alabama, the City in which Claimant resides. His doing so violates the Carrier's CLC Corporate Lodging Policy. Claimant used his Corporate Lodging card to stay at a motel, when he was on Holiday and vacation on May 25 and 26, 2015. Claimant stayed at a motel on Sunday August 16, 2015, a rest day, when he received his weekend travel allowance, contrary to Carrier-Organization negotiated policy.

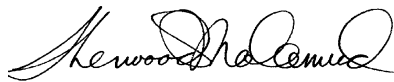
BOARD FINDINGS

During the Board's deliberations, the Organization objected to the October 9, 2015 notification letter. The letter failed to specify the rules allegedly violated by Claimant's conduct. This Board determined in Awards 106 (MacDougall) and 114 (Malamud); NRAB Third Division Award No. 35022, BMW v. BNSF (Kenis) that it was not necessary to specify the Rules allegedly violated. Under Rule 25, the Carrier had to provide sufficient information to alert Claimant of the conduct that is the subject of the investigation. The Carrier did so in the October 9, 2015 letter.

The record does not reflect the reason for Claimant's failure to appear. An employee may absent himself from an investigatory hearing. He may not frustrate the process. NRAB Second Division Award 8555 (Vernon). An employee who fails to appear at his own hearing, authorizes the Carrier to proceed. NRAB Third Division, Award20113 (D. Eischen). In the absence of a reason, the Board concludes that the denial of the postponement was appropriate and did not deprive Claimant of a fair hearing. The Carrier submitted exhibits and documentation to support its determination that Claimant violated the Carrier's Lodging Policy. The decision to dismiss Claimant is amply supported by this record.

AWARD

Claim denied.



Sherwood Malamud

Neutral Member

Date: November 3, 2017