

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)
Employees Division - IBT Rail)
Conference)
)
and)
)
)
CSX Transportation, Inc.)

Case No. 59
Award No. 59

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's dismissal of Claimant S. Kari for the alleged violation of CSXT – General Operating Rule A, General Regulation GR-2, CLC Policy and CSX Code of Ethics was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier's File 2012-133489).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Kari shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On July 23, 2012, the Carrier issued a notice of investigation to Claimant stating:

The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with information received on July 3, 2012 on the Nahunta Subdivision, in the vicinity of Lake City, FL. It is alleged that you used your CLC card to stay in hotels for non-business purposes on at least 15 separate occasions.

In connection with the above incident, you are charged with failure to properly perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules – General Rule A; General Regulations GR-2, CLC Policy and CSX Code of Ethics.

CSXT Operating Rules - General Rule A requires employees to know and comply with rules, instructions and procedures governing their duties and to contact a supervisor for clarification and General Regulations GR-2 prohibits employees from being dishonest and willfully neglecting their duties.

The CLC Policy provides employees with access to hotels when forces and teams are working away from their home; the Policy permits use of the card only for lodging expenses an employee is entitled to under the prevailing agreement.

CSX Code of Ethics requires employees to conduct business effectively and efficiently; prohibits theft, carelessness, misuse and waste of CSX property; and requires employees to contact their supervisor should there be any questions about what constitutes improper behavior.

On August 10, 2012, an investigative hearing convened wherein Claimant and his representative were afforded the opportunity to present witnesses, cross-examine Carrier witnesses and introduce into the record information or exhibits pertinent to the matter under investigation.

On August 30, 2012, the Division Engineer notified Claimant as follows:

A review of all the documents associated with the hearing demonstrate that the charges against you were proven[.]

The justifications that you used to defend your actions were self-serving and disingenuous at best. Your marital situation is of no merit with respect to the carrier's obligation to provide lodging to employees working away from home for business related purposes, and with respect to your testimony about staying with your brother in Hatch Bend, Florida, which is thirty-two miles from Lake City, Florida, does not warrant the impermissible use of charging non-business related motel costs to the carrier.

Based on the nature of the charges that were placed against you, the evidence and testimony presented at the investigation, and a review of your personnel record coupled with my finding of guilt, it is my decision that the discipline to be assessed is your immediate dismissal[.]

On August 29, 2013, Claimant elected to proceed with a review of the imposed discipline (dismissal) by submitting a claim to this Special Board of Adjustment No. 7529. In doing so, Claimant acknowledged that the decision of the Neutral Member of the Board is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement.

Organization's Position

Claimant maintains thirteen (13) years of seniority with the Carrier. During the period of January through May 2012 he was a machine and vehicle operator on the Service Lane Work Territory (SLWT) with headquarters in Jacksonville, Florida. Claimant worked across the expansive geographic territory covered by SLWT; he was entitled to stay in hotels using the CSX corporate lodging program referred to as CLC.

The Carrier failed to meet its burden of proof with its allegation against Claimant that he misused the CLC by staying in hotels on fifteen (15) different occasions during the period of January 19, 2012 – May 31, 2012. Claimant accessed CLC in accordance with the terms of the program. That is, he stayed in hotels on those 15 occasions when he was working for the SLWT at locations away from his residence. When Claimant stayed at the hotels on the disputed dates, he stayed there for a proper business purpose. Claimant testified that he needed to rest and sleep after working his scheduled assignment. Although the Carrier asserts that Claimant's residence is Lake City, Florida, Claimant lived with his brother in Hatch Bend, Florida and maintained a postal mail address in Lake City. Given these circumstances, Lake City did not qualify as Claimant's "home" under the CLC Policy.

Dismissal is punitive because Claimant did not steal, defraud or misuse Carrier property or improperly access the CLC program. At most Claimant possessed a reasonable, if not mistaken, view of the CLC Policy. Thus, he mistakenly used the Carrier's CLC policy instead of intentionally misusing it. Third

Division Award 39867 and Award 39 of Public Law Board 7120 show that the Carrier's dismissal is unwarranted. This Board has authority to rescind the dismissal.

Carrier's Position

Claimant occupied a position with the SLWT which is based in Jacksonville, Florida. His workweek was a ten (10) hour workday, Monday through Thursday. Upon completion of the workweek he returned to his address of record Lake City, Florida, which was sixty-four (64) miles from Jacksonville. When Claimant is working away from his home (his address of record at CSX) he can use the CLC card to stay in a Carrier-provided hotel. On fifteen (15) dates between January 19, 2012 and May 31, 2012, Claimant used the card for the purpose of non-business lodging in Lake City, Florida. On each occasion he had completed his 10-hour workday and had been released from duty.

Claimant received a fair and impartial hearing which established substantial evidence of his rules violations. His address of record at CSX was Lake City, Florida; Claimant did not have a business reason to stay in a hotel at that location after his release from duty on Thursday. Claimant could have used the card only in the circumstances where he was required to work on Friday or beyond his regularly scheduled hours on Thursday. Using the card because he was estranged from his spouse is not in accordance with the CLC Policy.

Claimant's accessing a benefit under the CLC program which he was not entitled to access on the basis of a personal reason constitutes a misappropriation of Carrier funds, reflects dishonesty and willful neglect of his duties. Converting CSX assets for personal use violates the Code of Ethics. Although Claimant asserted it was permissible to stay in a Carrier provided hotel on any Sunday through Thursday, the assertion directly conflicts with the CLC Policy and testimony of Manager Spurlock, e.g., only stay in a hotel on Thursday if he was required to work beyond his 10-hour workday or was to work on Friday.

Dismissal is appropriate for this major offense. Regardless of an employee's longevity with the Carrier, theft or dishonesty always have been grounds for dismissal in this industry. On-property awards sustain dismissal for misuse of the CLC card such as Award 131 of Public Law Board 7163 (30-year employee misused card on thirteen (13) occasions). Identical conclusions are reflected in numerous awards by other Public Law Boards and Third Division Awards.

Findings

Public Law Board No. 7529, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

A decision by this Special Board of Adjustment No. 7529 is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement. Within that evidentiary framework, the Board renders these findings.

Claimant's workweek consists of a ten (10) hour workday on Monday, Tuesday, Wednesday and Thursday. Upon completion of his regularly scheduled 10-hour workday on Thursday, he was released from duty. In Claimant's situation, he drove to Lake City, Florida, where he stayed at a hotel on fifteen

(15) occasions between January 19, 2012 and May 31, 2012 which he paid for using CSX funds under the CLC program. He acknowledged that on those 15 occasions he was not on assignment for the Carrier.

The CLC Policy states:

CSX has contracted with Corporate Lodging Consultants, Inc. to negotiate the lowest possible room rates with hotels across our system for our forces and teams *when they are working away from home.*

[Emphasis added.]

Claimant's address of record that he provided to the Carrier is Lake City, Florida. For purposes of the CLC Policy, Claimant's "home" is Lake City and when he stayed in a hotel in Lake City on the confirmed 15 occasions he was not on assignment with CSX. In other words, Claimant was not "working away from home." Claimant acknowledged he stayed in the hotel for a non-work, personal reason - - he is estranged from his spouse.

The Board finds there is substantial evidence that Claimant violated CSXT – General Operating Rule A, General Regulation GR-2, CLC Policy and CSX Code of Ethics. That is, he violated the CLC Policy by using the CLC card and Carrier funds to stay in a Carrier provided hotel for a non-business purpose after he had been released from duty. This constitutes a use of CSX assets for personal gain in violation of the Code of Ethics and General Regulation GR-2. By not seeking clarification whether his interpretation of "home" for purposes of his circumstances was permissible under the Policy, Claimant violated General Operating Rule A and the Code of Ethics wherein an employee is instructed to ask the supervisor for guidance as to what constitutes an impropriety.

Unlike the situation in Third Division Award 39867 and Award 39 of Public Law Board 7120 - - cited by the Organization - - where the employee was reasonably confused about the policy, Claimant did not testify he was unsure whether he could use the card and CLC program in his circumstances. He did not inadvertently consume a benefit for which he was not entitled to access.

The Board concludes this claim with the rationale in on-property Third Division Award 34974:

The conduct of the Claimant is a serious offense reflecting adversely upon his honesty, judgment and integrity. The Claimant's actions cannot be reconciled with the most basic obligation owed to an employer. Consequently, the penalty of dismissal will not be disturbed.

Award
Claim denied.

Patrick J. Halter /s/
Patrick J. Halter
Neutral Member

Dated on this 2nd day of
December, 2015