

PUBLIC LAW BOARD NO. 7529

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

Case No. 67
Award No. 67

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

1. The Carrier's dismissal of Claimant M. Linkswiler for the alleged violation of CSXT Operating Rules 100.1, 103.7, 104.3 and 106.3, CSX Safeway Rule GS-1; the CSX Code of Ethics; and the CSX Firearm/Weapon Policy was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21001014/2014-166797).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Linkswiler shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On March 21, 2014, 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 an incident that occurred at approximately 2330 hours, on March 12, 2014, in the vicinity of Lynchburg, Virginia, when it is alleged that you were involved in a reported disturbance on the second floor of the CLC Extended Stay America hotel, where it was reported by the Lynchburg Police Department that you were in possession of a firearm and live ammunition in your hotel room, and you were removed from the property.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, conduct unbecoming a CSX employee, creating a disturbance, possession of a firearm, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 103.7, 104.3, 104.4 and possible violation of 106.3; CSX Safeway Rule GS-1; and the CSX Code of Ethics and the Firearm/Weapon Policy.

Rule 100 – Application of Rules and Special Instructions, requires employees to know and comply with rules, instructions and procedures governing their duties and to take the safest course but, should there be a need for clarification on that course, to contact a supervisor (Rule 100.1).

Rule 103.7 prohibits employees from defacing or destroying CSX property or possessing “a firearm or other weapon when on duty, on CSX property, or when occupying facilities provided by CSX unless authorized.”

Rule 104 – Employee Behavior, prohibits “boisterous, profane, or vulgar language, or ... behavior that endangers life or property” when the employee is “on duty, on CSX property, or when occupying facilities provided by CSX” (Rule 104.3). Also prohibited is “criminal conduct that may damage CSX’s reputation or that endangers CSX property, employees, customers, or the public” (Rule 104.4).

Rule 106 – Drugs and Alcohol, prohibits an employee from “possessing, using, or being under the influence of alcoholic beverages or intoxicants when ... occupying facilities provided by CSX” (Rule 106.3).

General Safety Rule GS-1, Safety Responsibilities, states that employees “must ensure that behavior in the workplace is civil and courteous” and observe local, state and federal laws and regulations pertaining to job tasks. The CSX Code of Ethics states that “a safe and secure work environment must also be free from violence” and “any intimidation, acts or threats of violence will not be tolerated against company employees or non-CSX individuals while doing business with CSX, on CSX property or in CSX-sponsored lodging.”

The Firearm/Weapon Policy prohibits an employees from carrying or having “in their possession any firearm or other weapons while on duty, while occupying facilities paid for or furnished by the company, unless authorized by the company.”

On April 10, 2014, an investigative hearing convened wherein Claimant and his representative cross-examined Carrier witnesses and presented testimony and evidence on the incident of March 12, 2014, and the alleged rules violations.

On April 30, 2014, the Chief Engineer notified Claimant as follows:

A review of the evidence, testimony, and all other documents associated with the hearing demonstrate that the charges against you were proven[.]

Based upon my finding of guilt, couple with the serious nature of the offenses and your disregard for the basic tenet of a positive employee/employer relationship; it is my decision that the discipline to be assessed consequent to your proven actions is your immediate dismissal[.]

On May 4, 2014, 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

Leading up to the incident date of March 12, 2014, Claimant has six (6) years of seniority and a relatively clean disciplinary record. In March 2014 his assignment with Gang 5G79 required the Carrier to provide lodging for Claimant. In regards to his stay on the evening of March 12, 2014, at the Extended Stay

America Hotel, Claimant denies causing a disturbance, denies discharging a firearm, denies he was intoxicated and assert the firearm in his possession was safely secured in his personal bag. There was no discharged shell casing in the hotel room because Claimant denies firing his weapon. Also, the window in his room was damaged upon his arrival. Claimant was not arrested or charged by law enforcement. Other than Claimant, there are no witnesses. Claimant is a victim of circumstance as he had complained to hotel management about door slamming and noise. When law enforcement arrived, Claimant was sleeping. The Carrier has failed to meet its burden of proof. The claim must be sustained and Claimant reinstated with restoration of benefits.

Carrier's Position

Claimant was off-duty staying at a Carrier provided lodging facility. Guests complained to hotel management that they heard Claimant's door slamming repeatedly. The front desk clerk attempted to speak with Claimant; she observed him slamming the door to his room twice. Calls to the front desk indicated gunshot noise coming from Claimant's room. Law enforcement arrived and found a shell casing and pistol in Claimant's room as well as a hole in the window screen of Claimant's room. Hotel management asked Claimant to leave; he stayed at another hotel that night (March 12, 2014).

After obtaining and reviewing the law enforcement report, CSX Special Agent Phillips testified that Claimant violated the charged rules. Further support that events unfolded as set forth in the law enforcement report and establishing Claimant's rules violations is found in the testimony of General Manager Brown, Extended Stay America Hotel, and Director Hinnant, Program Construction Team and charging officer. Claimant acknowledges having a firearm in his hotel room; he changed his story regarding the gunshot residue (GSR) test. Claimant's story is self-serving. Dismissal is warranted as the rules violated are major offenses. Additionally, his disciplinary record shows a serious charge involving a physical altercation with a contractor used by CSX and two attendance violations.

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.

There is substantial evidence that Claimant committed rules violations. He acknowledges having a Taurus Judge pistol in his possession in the hotel room funded by the Carrier for Claimant. This violates Rule 103.7 and the Firearm/Weapon Policy; Claimant's having a concealed weapon permit does not exclude or exempt him from complying with Rule 103.7 and the Carrier's Firearm/Weapon Policy. Also, Special Agent Phillips interviewed the front desk clerk; Phillips testified that she confirmed witnessing Claimant slam the door to his hotel room which violates Rule 104.3. Additionally, in accordance with state law (Virginia Code 18.2-119) and Lynchburg (VA) City Code 27-22, the hotel clerk signed a "trespassing notice" that barred Claimant from returning to the Extended Stay America Hotel. Barred from the hotel premises constitutes violations of General Safety Rule GS-1, Safety Responsibilities, and the CSX Code of Ethics. His violation of Rule 103.7, 104.3, Firearm/Weapon Policy, CSX Code of Ethics

and General Safety Rule GS-1 leads to a violation of Rule 100.1 (comply with the rules). These violations, coupled with Claimant's disciplinary record of major offenses, show that dismissal is the appropriate penalty in the circumstances of this claim.

As this Board stated in Award 4:

The Carrier has a duty and obligation to provide a safe working environment for its employees free of threatening behavior. In this instance there was no excuse for Claimant's actions and we find no reason for mitigating the discipline as it was not arbitrary, excessive, or capricious and it was in accordance with the Carrier's progressive discipline policy. This discipline will not be set aside and the appeal/claim is denied.

Award
Claim denied.

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

Dated on this 2nd day of
December, 2015