

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION – IBT RAIL CONFERENCE (Organization file: D15904815))))))))	PARTIES TO THE DISPUTE
vs.		
CSX TRANSPORTATION, INC. (Carrier file: 2015-187784)		

- 1. The Carrier's dismissal of Claimant K. Sykes for the alleged violation of CSXT Operating Rules 104.2, the CSX Travel and Expense Policy and the CSX Code of Ethics was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D15904815/2015-187784 CSX).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant K. Sykes shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."*

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 15, 2012, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication.

The facts in this case are not in dispute. The Claimant has approximately sixteen (16) years of service in the Carrier's Maintenance of Way Department. Between January and December 2015, the Claimant was a manager with the Carrier. During his employment as manager the Claimant expensed flights, a night of lodging and incurred late fees on his personal American Express credit card.. Of these charges, the Claimant expensed canceled flights, along with a hotel charge that was refunded. On April 9, 2015, Claimant was charged with fraudulent expense reporting including violation of Rules 104.2, the CSX Travel and Expense Policy, and the CSX Code of Ethics, where "fraud and theft are crimes and do not fit in with our culture at CSX ... Fraud is a type of deception such as ... misrepresentation on

timesheets or expense reports or dishonest accounting practices.” The Claimant stated that he was confused with the process for submitting expense reports and did not intentionally defraud the Carrier. On May 13, 2015, the Claimant was dismissed for violating the CSX Transportation Operating Rules, Travel and Expense Policy and Code of Ethics.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization’s position is that the Carrier has failed to comply with the procedural protections of Rule 25 of the Collective Bargaining Agreement. By failing to bring charges against the Claimant within thirty (30) days from the date of first knowledge of the events the Carrier has violated Rule 25. In support, the Organization claims that nearly all of the evidence presented by the Carrier was dated more than thirty days prior to the investigation. The Organization also claims, notwithstanding the procedural violation, that the Carrier has failed to meet its burden of proof by not providing substantial evidence to support its determination of guilt and level of discipline. By charging the Claimant with dishonest conduct, the Carrier was required to show that the Claimant intended to be dishonest when he incorrectly filled out his expense reports and not merely mistaken or confused. The Organization argues that CSXT Operating Rule 104.2 was neither listed on the Notice of Investigation and was not introduced or referred to during the formal hearing and therefore this Board cannot determine whether the Claimant was in violation of the rule. The Organization also submits that the discipline imposed was arbitrary, unwarranted and a violation of the Agreement. The Claimant is a seventeen (17) year employee and did not believe he was acting inappropriately.

POSITION OF THE CARRIER:

The Carrier’s position is that the Claimant was granted a fair and impartial hearing. Although the Organization took issue that the specific rule violations were not included in the charge letter, the Carrier asserts that there is no requirement in the Agreement for specific rules in the charge letter and the Claimant was otherwise represented by the Organization, received proper notice of the charge, sufficient time to prepare a defense, the opportunity to present and examine evidence, and the opportunity to present and cross-examine witnesses. The Carrier asserts that the Claimant received his charge letter within the appropriate allotted time required by the Agreement after they acquired knowledge of the incident. The Carrier states they have met their burden in determining that the Claimant violated CSX Operating Rule 104.2. In support they assert that the Claimant was aware that he had received a refund, blacked out those line items on the statement submitted with his expense report, and admitted he should have taken additional actions. The Carrier states that the discipline assessed is proper. The Rule infractions committed by the Claimant warrant a penalty of dismissal even on a first occurrence.

RESULT:

The Carrier, as this is a discipline case, has the burden of proof concerning this claim.

As to the procedural issue at hand, the Claimant is found to be dismissed under his managerial role on April 8, 2015 and was given notice of his dismissal as an employee covered by the Collective Bargaining Agreement on April 9, 2015. This timeframe is well within the timeframe required by the Collective Bargaining Agreement.

Although the Carrier failed to enter the disciplinary policy into the record, there are certain actions by an employee, regardless of this failure, that can be so egregious as to allow for disciplinary measures to be properly assessed. The Claimant has clearly committed fraud, which this Board considers to be one of these egregious actions. Therefore, even without the specific disciplinary policy as required by the Collective Bargaining Agreement, this Board is sufficiently content with the fact that the Claimant committed fraud and will uphold the dismissal.

AWARD:

The claim is denied.



Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017,

At: Chicago, IL