

**PUBLIC LAW BOARD NO.
7529 CASE NO. 98
AWARD NO. 98**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization file: D70704215))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier file: 2015-189487))	

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The Carrier's dismissal of Claimant D. Holsey for the alleged violation of CSXT Operating Rules 100. 1 and 104.2 was on the basis of unproven charges, arbitrary and in violation of" the Agreement (System File D70704215/2015-189487 CSX).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant D. Holsey shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."*

FINDINGS:

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.

After a thorough review of the record, and a hearing on this matter held on August 25, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question in this claim.

The facts in this case are not in dispute. The Claimant started working for the Carrier on August 6, 2007 and established seniority in the Carrier's Maintenance of Way Department. The Claimant was a manager with the Carrier and had been relocated to the Jacksonville Division. From the time period of October 10, 2014 to March 16, 2016, the Claimant is alleged to have stayed multiple unauthorized nights at CLC lodging. On April 9, 2015, Claimant was charged with improper CLC usage. The Claimant believed that he was allowed to stay in CLC until he found a residence. On June 8, 2015 the Claimant was dismissed for violating CSX Transportation Operating Rules 100.1 and 104.2.

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 by failing to bring charges within thirty (30) days of the date of knowledge of the alleged bad act. The Organization claims that the Carrier had knowledge of a violation and then employed an audit so as to further strengthen its case. However, Rule 25 contains no provision for an extension of the disciplinary time limit simply to conduct an audit. The Organization claims that the Carrier has also failed to meet its burden of proof and even if it has, the discipline imposed is arbitrary, unwarranted and a violation of the Agreement. The Organization states that the Carrier was obliged to show that the Claimant intended to be dishonest, and that he was not simply mistaken or confused. The Carrier has failed to present evidence to present sufficient evidence to establish the Claimant was dishonest, that he falsified documents, lied to the Carrier or was unethical in his actions. It is a widely held notion that discipline is to be progressive rather than punitive in nature. The Carrier has failed to meet its burden and therefore the discipline should be reduced.

POSITION OF THE CARRIER:

The Carrier's position is that the Claimant's due process rights were provided as required under Rule 25 of the Agreement and the hearing was conducted in a fair and impartial manner. The Carrier states that the audit investigation concluded on April 15, 2015, which was 19 days prior to the charge letter. It is their position that the Carrier must walk a fine line of properly investigating incidents without being too quick to charge unsubstantial allegations. Only when the Carrier has sufficient information to charge is the "first knowledge" date triggered, which occurred when the audit investigation concluded. The Claimant also asserts that there is no requirement in the Agreement for the Carrier to specify rules in the charge letter, therefore the Organization's claim is meritless. The Claimant received proper notice of the charge, the opportunity to present and examine evidence, and the opportunity to present and cross-examine witnesses. The Carrier states they have met their burden in determining that the Claimant violated CSX Operating Rules 100.1 and 104.2. In support they assert that the Claimant failed to cease CLC use after receiving his relocation funds. The Claimant stole from the Carrier by having it pay for his personal lodging for five months. The Carrier asserts that the Claimant's actions demonstrate a violation of the rules and is considered a Major Offense. One for which a single infraction, if proven guilty, can result in dismissal, therefore it is reasonable.

RESULT:

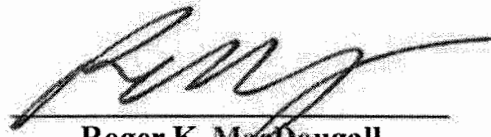
The Carrier, as this is a discipline case, has the burden of proof concerning this claim.

As to the procedural issue at hand, while it is true that an audit cannot necessarily be used as an excuse to extend the time limits of the Carrier's knowledge of the incident, in this case, the Carrier's knowledge and investigation notice did not crystallize until April 15th. This Board finds that the investigation was ongoing until April 15th. It was at this point that the managers were notified and therefore the notice of the investigation was in compliance with the Collective Bargaining Agreement. Therefore, the procedural dispute of the Organization is dismissed.

Turning to the quantum of discipline, it is clear that the Claimant misused the company corporate card. He knew of his improper conduct but continued with his actions despite this knowledge. Therefore, the discipline by the Carrier is upheld, resulting in the Claimant's committal of fraud. The Carrier has met their burden of proof and the Organization's claim is dismissed.

AWARD:

The claim is denied.


Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL