

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 7874

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BROTHERHOOD OF MAINTENANCE OF WAY DIVISION (BMWE)	)	
	)	
and	)	Case No. 4
	)	
FLORIDA EAST COAST RAILWAY, LLC	)	Award No. 4

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Richard K. Hanft, Chairman and Neutral Member  
Robert Bullock, Carrier Member  
Ross Glorioso, Employee Member

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

1. The Carrier's discipline (dismissal) of Mr. J. Berry, Jr., by letter dated June 26, 2020, for alleged dishonesty and abuse of a company provided lodging card by way of authorizing and paying for lodging on December 16, 17, 19 and 31, 2019 and on January 5, 6, 7 and 8, 2020 while out of the service of the Carrier on FMLA, was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File DRA905020 FEC).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Berry, Jr., shall '... be reinstated, paid for all back time to include any late payment, house payment or and credit that me (sic) have bad judgements brought against him. All time lost be credited towards vacation and Lump sum payments.' (Employees' Exhibit 'A-2')."

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant in this matter established and maintained seniority in the Carrier's Maintenance of Way Department. It is undisputed that Claimant was on medical leave pursuant to the Family Medical Leave Act ("FMLA") during relevant portions of December 2019 and January 2020. It is also uncontested that during this time period Claimant was under the care of his own personal physician.

The record is clear that on December 16, 17, 19 and 31, 2019 and again on January 5, 6, 7 and 8, 2020 Claimant used a company issued "CLC" Lodging Card to pay for hotel rooms while he was not in the Carrier's service. Claimant admitted to using the Carrier's lodging card to pay for his hotel room at the investigation but explained that because he was living far away and

seeing a doctor near his work assignment to try to get back to work that he thought that it would be alright to use the Carrier's lodging card. Claimant later admitted that it was wrong what he did.

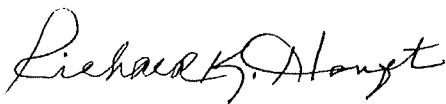
The Organization complains that there were procedural errors involved in the scheduling and hearing of the Investigation, but upon review, the Board finds that any procedural errors complained about were the result of Claimant failing to keep the Carrier informed of his current address.

Moreover, the Organization argues that the Carrier failed to meet its burden of proof. Inasmuch as the Claimant admitted to the conduct for which he was charged, that argument is without merit.

Finally, in reviewing the quantum of discipline assessed in this matter, the Board takes note that the charges against the Claimant were of a nature as described in Carrier's Discipline Policy as an "offense warranting dismissal" and was the second serious offense within the discipline policy's review period. As such, the Board can find no justification to overturn the discipline assessed on the property.

AWARD: The Claim is denied.

ORDER: This Board, after consideration of the dispute described above, hereby orders that an Award not favorable to the Claimant be made.



Richard K. Hanft, Chairman



Robert Bullock, Carrier Member



Ross Glorioso, Employee Member

Dated: At Chicago, Illinois, October 31, 2022