

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 7874

BROTHERHOOD OF MAINTENANCE OF WAYEMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	Case No. 7
and)	
)	Award No. 7
FLORIDA EAST COAST RAILWAY COMPANY,)	

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. K. Marshall, by letter dated May 11, 2022, for alleged dishonesty and abuse of a company provided lodging card by way of authorizing and paying for lodging on March 22, 23 and 24, 2022 while assigned to the Ft, Lauderdale Section Gang, was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive. (System File FEC 304322 FEC).
2. As a consequence of the violation referred to in Part 1 above:

“*** the Carrier clear all mention of the matter from Claimant’s personnel record, immediately return Claimant’s rights and benefits unimpaired and compensate him for all losses suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost because of the improper discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered, to include railroad retirement accrument (service months and contributions lost) because of the improper discipline.’ (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.

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 had been employed by the Carrier as a Trackman for eight (8) years prior to the event giving rise to this dispute. Immediately prior to March 18, 2022 Claimant was working as a Trackman assigned to the Ft. Lauderdale Section gang position, a headquartered job.

Claimant bid on a Line of Road Extra Gang 1 job. Claimant was awarded that job on Friday, March 18, 2022. Line of Road workers are permitted to obtain lodging by use of a CLC Carrier provided credit card. Claimant arranged for lodging for March 22, 23 and 24, 2022 over the weekend after being awarded the job on Friday. Upon Claimant's return to work on the following Monday morning, March 21, 2022, Claimant was informed by his supervisor that he was being held over on the Ft. Lauderdale Section Gang for the upcoming week. Claimant did not cancel his lodging arrangements after being notified he was being held over on the headquartered position.

Claimant was removed from service on April 18, 2022 and charged with dishonesty and abuse of a Company provided lodging card. A formal Investigation was convened on the property on May 6, 2022. By letter dated May 11, 2022 Carrier informed Claimant that he had been found guilty of the charges and was dismissed from service immediately.

The Organization appealed Carrier's decision by letter dated May 17, 2022 and the dispute progressed through the on-property appeals process in the ordinary fashion including in conference on September 1, 2022, but without resolution. The matter now properly comes before this Board for resolution.

At the outset, the Organization asserts that Carrier violated Rule 12 (f) that provides "The Company shall furnish the Local Chairman or Committeeman copies of all documents known to be presented at the hearing at least twenty-four (24) hours prior to the hearing upon written notification by the employee that the Organization is representing the individual."

In this particular matter, the record evidence demonstrates that the documents that were to be presented including the Operating Rules, General Rule GR-15 and the Code of Conduct Policy that Claimant was being charged with violating were sent to the Organization at 12:51 pm on May 5, 2022 while the hearing was scheduled to convene at 08:00 am on May 6, 2022. The Carrier clearly did not comply with Rule 12 (f) thereby thwarting the Organization's ability to prepare an adequate and proper defense of the Claimant.

In so finding, the Board is compelled to sustain the Organization's claim. The remedy requested in Paragraph 2 of the Statement of the Claim set forth above shall be awarded subject to Rule 12 (s) of the Parties' Agreement.

AWARD: The Claim is sustained.

ORDER: This Board, after consideration of the dispute described above, hereby orders that an Award favorable to the Claimant be made. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Richard K. Hanft, Chairman



Robert Bullock, Carrier Member



Ross Glorioso, Employee Member

Dated: At Chicago, Illinois, October 5, 2023