

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DIVISION – IBT RAIL CONFERENCE

And

CSX TRANSPORTATION, INC.

Case No. 48

* * * *

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

1. The dismissal of Trackman K. M. Hill for his alleged conduct unbecoming an employee while staying in company provided lodging between December 2 and 7, 2004, was without just and sufficient cause, based on unproven charges and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, Trackman K. M. Hill shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Background

At the time of the incident at issue, Claimant K. M. Hill, with seniority dating from June 22, 1977, was working as a Production Trackman in a Floating Gang (6DEN) on the Baltimore Service Lane. His assigned hours were 6:30 a.m. to 4:30 p.m., Monday through Thursday, with Friday through Sunday as rest days. Floating gangs are given living expenses, Company-sponsored lodging, and travel accommodations during their regularly assigned work week.

The Carrier provided Claimant and his Gang 6DEN with lodging at the Holiday

Inn in Cumberland, Maryland while they worked in that area during the weeks of November 29 through December 2, 2004 and December 6 through December 9, 2004. On December 3, 2004, Holiday Inn manager Rick Brode contacted CSXT and reported that his employees had complained about the conduct of two CSXT employees, including Claimant Hill. Kenneth Peters, a special agent with the CSXT Police Department, called Mr. Brode, who explained that Claimant was involved in several incidents of harassing the hotel's employees. Agent Peters followed up his telephone discussion with Brode by going to the Holiday Inn and taking the oral and written statements of each complaining employee. Peters obtained five written statements and personally interviewed four of the five complainants, all of whom were females.

Thereafter, on December 14, 2004, Claimant was charged with "conduct unbecoming any employee of CSX Transportation" and directed to report to an investigation. The charge was revised and made more specific in a letter dated December 17, 2004, which stated, in relevant part:

You are instructed to attend a formal investigation to (sic) held in the Roadmaster's Office, 722 Virginia Avenue, Cumberland, MD 21502 on Thursday, December 30, 2004, 11:30 a.m., with you as Principal. The purpose of the investigation is to develop the facts and place your responsibility, if any, in connection with reports that I received on December 2, 2004 concerning your harassing Miss Ashley McGill, Desk Clerk at Holiday Inn -- Cumberland, MD, on the date of November 29, 2004. Additionally we have received supplemental information from other employees of the hotel concerning your questionable activities while a guest at the facility between December 2 and December 7, 2004.

In connection with the above, you are charged with conduct unbecoming employee and possible violation of CSX Transportation Operating Rule GR-2 (formerly CSX Transportation Operating Rule 501).

By agreement of the parties, the hearing was postponed until January 4, 2005.

Following the investigation, the Carrier dismissed Claimant, effective January 18, 2005.

The Organization appealed Claimant's dismissal, and the matter was processed through the contractual grievance procedure. On May 28, 2005, the Organization rejected the Carrier's final appellate declination, and the dispute has not come before this Board for adjudication.

Contentions of the Parties

The Carrier contends that the Record contains substantial evidence of Claimant's guilt. All of the complaints were from female employees of the Cumberland Holiday Inn, who reported that Claimant made harassing remarks, engaged in inappropriate contact, and repeatedly invited them to his room. The statements also made reference to Claimant's having drug paraphernalia in his room and to Claimant's attempt to take someone else's belongings.

The Carrier emphasizes that November 29, 2004 was the evening before Claimant's first day back to work after serving a 30-day suspension in connection with charges that in October 2004, he "permitted a female non-employee minor...and...[a] male non-employee brandishing a firearm to occupy [his] company provided lodging facility against Company policy."

In response to the Organization's contention that Claimant was denied a full and fair hearing, the Carrier argues that Claimant's due process rights were fully preserved, and there was no element of surprise in the case that the Carrier presented relative to the charges.

The Organization contends that (1) the charge(s) against Claimant were not precise; (2) CSXT violated Rule 24(i) by denying the BMW the opportunity to review relevant management records prior to the investigation, an action that prevented the Organization from identifying or approaching possible witnesses; and (3) CSXT also violated Claimant's due process rights by not producing as witnesses those motel employees who signed statements. Given these procedural deficiencies, as well as Claimant's 25 years of service, the Organization submits that the claim should be sustained.

Opinion

The BMW does not challenge the impartiality of the hearing process. Instead, it asserts that it was denied information and access to witnesses, which prevented it from mounting a defense. The Record evidence, however, does not support this claim.

First, the charge was clearly set forth in the Carrier's letter of December 17, 2004. That letter included specific reference to the alleged incidents and the times and place where they occurred. The rule at issue was also expressly set forth.

Based upon a careful review of the transcript, the Board finds that there was no element of surprise that in any way prejudiced Claimant's ability to defend himself. He and his representative fully understood the charge, and during the investigation, they comprehensively addressed the alleged incidents. As the Carrier pointed out, if the charge was not sufficiently specific, how would Claimant have understood the issue and why would he have approached Holiday Inn Manager Brode, Desk Clerk McGill and other hotel employees prior to the beginning of the January 4, 2005 investigation?

Second, there was no violation of Rule 24(i). That Rule requires the Carrier to afford a BMW representative, upon request, the opportunity to "review relevant management

records for the purposes of researching issues related to enforcing the collective bargaining agreement. The following includes claims, appeals, hearing/investigation records, statements, and safety records." This language does not require the Carrier to provide summaries of testimony and/or investigative materials to the Organization prior to a hearing. In this case, Special Agent Peters obtained statements from Holiday Inn employees during the interviews he held on December 8, 2004, and these statements remained in his possession until the investigation. Peters is not a manager, and the materials he obtained were outside the scope of Rule 24(i).

Furthermore, there is no evidence that Claimant was prevented from identifying or approaching potential witnesses prior to the investigation. To the contrary, the Record reveals that Claimant went to Manager Brode and tried to persuade him to abandon his complaint upon which the charge was based. Likewise, the evidence shows that Claimant knew precisely who had accused him of harassment and other inappropriate behavior, and he and his representative could have sought their appearance at the hearing.

As to the failure of the hotel employees to give live testimony, Special Agent Peters testified credibly that CSXT attempted to arrange for the appearance of Mr. Brode and the complaining employees. They refused, however, because they felt intimidated by Claimant, who had returned to the hotel a few times in an effort to persuade the employees to change their stories, and it is well settled that the Carrier does not have subpoena power in the administration of disciplinary matters. The written statements of the Holiday Inn employees were made a part of the Record, however, as well as Agent Peters' testimony as to how he conducted his interviews with the hotel employees. Those

statements left no doubt that Claimant had conducted himself inappropriately by harassing and intimidating female employees of the Holiday Inn.

Moreover, Claimant acknowledged that he knew the female employees who made the complaints against him. He also confirmed that he was in the rooms on the dates identified in the hotel billing records.

The Claimant testified denied the charge and testified that on some unidentified date, he went to see Manager Brode who promised to call CSXT and explain that the complaint was a "mistake" According to Claimant, Brode agreed that there had been a "misunderstanding", which he promised to clear up with the Carrier. Following this testimony from Claimant, Special Agent Peters was recalled. He testified that on the morning of January 4, 2005, prior to the hearing, he spoke to Mr. Brode. At no point in their conversation did Brode tell Peters that the complaints had been a mistake. To the contrary, Brode told Peters that he wanted CSXT to pursue the investigation against Claimant. Claimant attempted to portray himself as the victim of mistaken identity and a broken promise by the hotel manager. Claimant's story, however, was discredited by Special Agent Peters whose credible testimony supports the conclusion that Claimant was not falsely accused because, in fact, he had harassed the employees, as they so stated.

The Board is mindful that one employee, Ashley McGill provided a statement recanting her earlier description of Claimant's inappropriate conduct. Not only is Ms. McGill's recantation suspicious, but it also flies in the face of the statements of the four other complaining employees, who remained unwavering in their accusations against Claimant.

Claimant's denials of misconduct are unconvincing. Moreover, his situation is aggravated by the fact that he had just served a 30-day suspension for similar inappropriate behavior while occupying company provided lodging at Martinsburg, West Virginia. He was banished from that facility, and, as a result of the instant incidents, he made himself unwelcome at the Holiday Inn in Cumberland, Maryland. The Carrier is under no obligation to maintain in its employment an unruly employee who negatively affects CSXT's reputation and exposes it to legal liabilities. The claim must be denied.

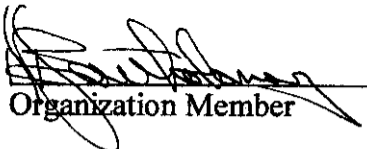
Award

The claim is denied.


Joan Parker, Neutral Member


Carrier Member

Dated: October 6, 2006


Organization Member

Dated: 10-6-06