

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION, INC.**

**Case No. 53**

**Statement of Claim:**

1. Appeal of the thirty working days actual suspension assessed Production Trackman J. Latham (ID No. 518238) on January 18, 2005 as a result of the January 4, 2005 investigation concerning the December 17, 2004 charge of occupying lodging facilities at the Carrier's expense using [his] CLC lodging card at the Holiday Inn, Cumberland, MD, without authority, between November 29, 2004 and December 3, 2004 [System File A04837905/12 (05-0170) CSX].
2. That J. Latham shall be reimbursed for any loss of wages including the thirty working day suspension assessed, and all matter relative to the investigation shall be removed from Mr. Latham's personnel file.

**Background:**

Claimant Jackie A. Latham was hired by the former Baltimore & Ohio Railroad Company on August 8, 1977. In November 2004,<sup>1</sup> he was working as a production trackman with floating gang 6DEN on the Baltimore Service Lane, with a regular schedule of Monday through Thursday, 6:30 a.m. to 4:30 p.m. Claimant's home was in Massachusetts. Members of floating gangs are provided living expenses, company-sponsored lodgings and travel accommodations during their regularly assigned work week.

Toward the end of November, Claimant was occupying a room at the Holiday Inn in Cumberland, Maryland, at the Carrier's expense. On November 29, Claimant was

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<sup>1</sup> All dates hereafter are 2004 unless otherwise indicated.

displaced from his position with Gang 6DEN by K.M. Hill, and placed on furloughed status beginning November 30. On December 8, Carrier Special Agent K.O. Peters reported to the Cumberland Holiday Inn to investigate complaints by hotel staff members regarding the conduct of two Carrier employees, one of whom was Claimant. In the course of his investigation, Peters obtained a copy of Claimant's lodging bill for the period November 21 to December 3, which he forwarded to Roadmaster G. L. Appel.

By letter dated December 14, the Carrier instructed Claimant to attend an investigation on December 22, "to determine the material facts in connection with your use of a corporate lodging facility without authorization and conduct unbecoming an employee of CSX Transportation." A "corrected copy" was issued on December 17, instructing Claimant to disregard the December 14 letter, and attend an investigation on December 30:

to develop the facts and place responsibility, if any, in connection with information ... wherein you had been occupying lodging facilities at the Carrier's expense using your CLC lodging card at the Holiday Inn, Cumberland, Maryland, without authority, between November 29, 2004 and December 3, 2004.

In connection with the above, you are charged with conduct unbecoming an employee of CSX Transportation, fraud and theft. Your actions as indicated above appear to be in possible violation of CSX Transportation Engineering Department CLC Lodging policy, as well as in possible violation of CSX Transportation Operating Rules General Regulations GR-2....

After one postponement, the investigation was held on January 4, 2005. At hearing, Claimant admitted that he had stayed at the Holiday Inn without authorization after his November 29 displacement. Claimant explained that he was attempting to make a displacement onto another gang, and was waiting for someone from the Carrier to get back in touch with him with the information he needed to do so. Claimant testified:

Q: Is it generally your habit to stay in the CSX provided facility beyond the day that you're displaced?

A: No.

Q: So you knew you weren't supposed to do that?

A: Not at – well see, the circumstances around it are different, because if I was furloughed, I would check out and leave. They told me I had a job to go to, which was a couple hours away. And if I had checked out and went to Massachusetts, and then they called me and said it's right here in Dumfries, Virginia, I would have had to turn around and come all the way back down the road. So I had a job. I was just waiting to hear from someone.

...

Q: But you never asked Gary Appel or any supervisor ...

A: Well I was furloughed from Gary Appel. I didn't know I had to go back to him. they told me I had to report to Dumfries, Virginia. Then when I talked to whoever I talked to on the phone, they said the gang would be in Jessup, Maryland, and to report to Darrell Bush. So I checked out and went to Jessup.

(Car. Exh. B at 35.)

The Carrier's General Regulation GR-2 in pertinent part prohibits employee dishonesty. By letter dated January 18, 2005, the Carrier found Claimant guilty of the charges against him and assessed a thirty-day actual suspension. The Organization appealed the suspension by letter dated January 31, 2005. After the matter was discussed in conference on May 4, 2005, the Carrier issued a final declination of the appeal by letter dated May 16. Having been unsuccessful in resolving the matter on the property, the parties have presented it to this Board for final decision.

**Carrier's Position:**

The Carrier contends that Claimant was afforded a fair and impartial hearing. According to the Carrier, the December 17, 2004 corrected letter was clear and in compliance with all filing requirements of Rule 25 of the parties' Agreement. In response to the Organization's assertion that the Carrier did not provide the Organization with requested copies of material prior to the investigation, the Carrier argues that it is

required only to permit Organization review of relevant management records, not to provide copies of material. In any event, the Carrier submits, Claimant already had the material presented at hearing: Claimant's hotel bill and payroll records. In response to the Organization's assertion that Claimant was denied due process because the Holiday Inn staff members whose statements were presented at hearing were not made available for questioning, the Carrier argues that the staff statements were submitted only to show why Special Agent Peters was present at the Inn, and therefore the staff members' absence at hearing in no way impeded either Claimant's ability to present his defense or the full development of the record.

The Carrier further argues that the record demonstrates Claimant's guilt in the instant case. Claimant acknowledged at hearing that he had been furloughed, and that he had no permission to occupy the Holiday Inn from November 29 to December 3. According to the Carrier, it is well settled that a claimant's admission of guilt satisfies the Carrier's burden of proof in discipline cases. Claimant knew he was furloughed and without authority, but he nevertheless used his Corporate Lodging Card (CLC) for personal convenience. Operating Rule GR-2 prohibits Carrier employees from engaging in dishonest conduct. The Carrier asserts that Claimant committed a fraudulent act and theft in using his CLC card to pay for lodging without Carrier permission. The Carrier argues that Claimant's explanation for his actions is without credibility.

It is the Carrier's additional position that the thirty-day suspension assessed against Claimant was warranted, and even lenient in light of the serious nature of his offense. According to the Carrier, dismissal has been upheld for misconduct such as Claimant's and would have been justified in the instant case.

**Organization's Position:**

The Organization contends that due process was not afforded Claimant because the charge letter issued Claimant was vague. The Organization additionally asserts that it asked to review relevant management documents but was denied, and that the hearing officer proceeded with the investigation over Organization objection. The Organization argues that due process also was denied Claimant because the Holiday Inn staff members whose unsigned statements were presented at hearing were not available for questioning.

The Organization further argues that Claimant did not engage in misconduct by staying in the Cumberland Holiday Inn after November 29, 2004. As Claimant testified, he occupied the Carrier-sponsored lodging while waiting for the Carrier to tell him whom he was displacing and where to report. Under the parties' Agreement, Claimant was required to be physically present to displace onto another gang, and therefore needed to know where that gang was. The Organization cites Appel's testimony at hearing that the use of corporate lodging is based on individual need, and that he sometimes authorized CLC use for employees working late overtime or in the case of inclement weather. The Organization argues that Claimant properly chose not to act unsafely and drive home to Massachusetts in "possible inclement weather" while he was waiting for the Carrier to provide him the necessary displacement information.

It is the Organization's additional position that the thirty-day suspension imposed on Claimant was too harsh, in light of Claimant's almost-thirty-year record as a valued employee of the Carrier, with no prior suspensions of time off without pay.

**Findings:**

After a careful and thorough review of the record in the instant case, the Board is satisfied that all necessary due process was afforded Claimant. The Board finds that Claimant was afforded a full and fair hearing, with timely notice of the charges, time to prepare a defense, and the opportunity to produce and examine witnesses and evidence. The Organization's claims that due process was not provided are without merit.

On the merits, Claimant admitted at hearing that he did not have Carrier permission to use his CLC to stay at the Cumberland Holiday Inn after his displacement from Gang 6DEN on November 29, 2004 and placement on furlough as of November 30, 2004. Moreover, Claimant's proffered explanation for his conduct was inconsistent, at best. He testified that "if I was furloughed, I would check out and leave," but in the next breath testified "I was furloughed from Gary Appel." (Car. Exh. B at 35.) Furthermore, even assuming *arguendo* that Claimant's explanation that he stayed after November 29 because he had been told he had a job and merely needed information on where to report was truthful, it would not excuse his use of CLC lodgings without Carrier authorization.

As Roadmaster Appel testified:

Q: [W]ould staying in a CSX provided lodging facility while you were attempting to make a displacement, if you left messages, just staying there until somebody called you back, would you consider that a legitimate use of a CLC facility?

A: ... No, I would not.

Q: By company policy, would that be legitimate use of a company facility?

A: [I]f it hasn't been authorized by somebody and okayed by somebody, I would say no.

(Car. Exh. B at 45 – 46.) While the Organization argues that Claimant's circumstances merited permission to use Carrier-sponsored lodging, just as in the examples to which

Appel testified of employees working late overtime or having to travel in inclement weather, the Organization has failed to note the important difference in the instant case. Regardless of whether the Carrier *might have* authorized Claimant's use of CLC lodging in the circumstances he claims, the fact is that Claimant did not ask Appel or anyone else for such permission. Moreover, Claimant offered no credible explanation as to why he did not. The Board can only conclude that Claimant, a long-term employee no doubt well aware of the rules regarding his CLC use, acted intentionally to defraud the Carrier in *not* seeking permission to occupy the Holiday Inn lodgings, because he knew he had no right to such lodgings while furloughed and that permission was unlikely to be granted. Claimant's conduct violated Carrier Rule GR-2's prohibition on dishonesty, and dismissal might well have been justified. The Carrier instead chose to assess Claimant a thirty-day suspension, which the Board finds was well warranted.

**Award:**

The claim is denied.

  
JOAN PARKER, Neutral Member

  
CARRIER MEMBER

  
ORGANIZATION MEMBER

DATED: October 6, 2006

DATED: 10-6-06