

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYEES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated April 28, 2008, the Engineer Track instructed B.R. Maroney (hereinafter "the Claimant") to attend a formal Investigation on May 8, 2008, at the Carrier's Midwest Region Engineering Department conference room in Louisville, Kentucky, the purpose of which was "to determine the facts and place your responsibility, if any, in connection with a conversation that I had with you at the Best Western Hotel on April 22, 2008, at approximately 0707 CSX Time, in which you advised me that you had not allowed a non CSX employee to use the room provided to you for business purposes by CSX Transportation. My investigation," the letter continued, "has determined that this statement may be false and/or misleading."

The letter further stated:

In connection with the above, you are charged with conduct unbecoming an employee, unauthorized use of your CLC card, making false statements concerning matters under investigation and insubordination. Your actions in connection with the above matter appear to be a possible violation of, but not limited to CSX Operating Rules General Rule A and General Regulation GR-2 and CLC Policy.

The hearing location was subsequently changed to Terre Haute, Indiana, and the starting time to 1400 CSX time.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Probably the most serious charge against the Claimant was that he made a “false and/or misleading” statement to the Engineer Track concerning matters under investigation. The Board does not believe that that part of the charges has been proved. It is clear from the evidence that the Claimant’s son was in the Claimant’s hotel room with the Claimant on a number of occasions. The Engineer Track prepared a written statement of his interview of the Claimant on the morning of April 22, 2008. On page 1 of the statement, he wrote, “I ask[ed] Mr. Maroney on the morning of April 22, 2008 at around 0707 CSX time whether he had anyone staying in his room that was not a CSX employee to which Mr. Maroney stated No. Mr. Maroney said that no one except himself was staying in his room or had ever stayed in his room. . . .”

The word “staying” or “stayed” is used throughout the Engineer Track’s written statement. The word “stay” is defined in The New Oxford American Dictionary (2001) in the sense used in the Engineer Track’s written statement as follows: “intrans. (of a person) live somewhere temporarily as a visitor or guest: *the girls had gone to stay with friends* | *Minton invited him to **stay the night**.*” Being in someone’s hotel room is not necessarily staying with that person. As the dictionary definition denotes, “staying” with someone indicates living temporarily with someone or at least spending the night.

When the Carrier charges someone with making a false or misleading statement to management it is accusing the employee of acting deliberately and intending to deceive

management. The burden of proof in a discipline case rests with the Carrier, and the Board is not persuaded that the burden has been met in this case. If, in fact, the Claimant's son never spent a night in the hotel room with the Claimant, then the Claimant could have been truthful and not misleading, based on his own understanding of the term "stay," when he told the Engineer Track that nobody except himself was staying in his room or had ever stayed in his room.

The Board believes that the record falls short of establishing by substantial evidence that the Claimant's son ever spent the night in the Claimant's hotel room. The Engineer Track acknowledged that in the early morning of April 22, 2008, he saw the son asleep in the Claimant's truck. No witness testified that he or she ever saw the son stay the night in the Claimant's room.

The Carrier presented a written statement from the Assistant Head Housekeeper that when she checked room 239 (presumably the Claimant's room) on Monday, April 21, 2008, "both beds were used." The statement was objected to by the Claimant's representative as hearsay. The statement is hearsay. In addition, the statement does not say that both beds were slept in. A bed could be "used," for example, if someone sits on it.

In his statement the Engineer Track wrote, "Mr. Maroney ask[ed] me if an individual could visit him at the motel in the evening and I told Mr. Maroney yes I could not stop him from having visitors to his room but that no one that was not a CSX employee was to stay or be in the room other than during the early evening hours and that the manager of the hotel did not want the kid that had been staying in Mr. Maroney's room to be in his room ever again." That part of the Engineer Track's statement indicates that past visits by the Claimant's son would not have been a violation of the corporate

lodging policy. It could well have occurred that during just such a visit that the son sat on the second bed in the room instead of in a chair for a significant amount of time and gave the bed a “used” appearance. The point is that “used” is vague and that without the Assistant Head Housekeeper making herself available for questioning there is no way to know what she meant by “used.”

The Board has considered all of the evidence in the record on the question of whether the Claimant’s son “stayed” in the room with the Claimant as opposed to merely visiting him, which the Engineer Track’s statement indicates would not necessarily have been a violation of the corporate lodging policy prior to April 22, 2008. The Board finds that there is not substantial evidence in the record that the son ever actually “stayed” in corporate lodging with the Claimant as opposed to merely visiting him. The Board therefore finds that the record does not establish by substantial evidence that the Claimant gave a “false and/or misleading” statement to the Engineer Track on April 22, 2008.

In this connection the Board notes that the charge letter from the Engineer Track to the Claimant states that the purpose of the Investigation was to determine the facts and place the Claimant’s responsibility, if any, in connection with their conversation “in which you advised me that you had not allowed a non CSX employee to use the room provided to you for business purposes by CSX Transportation.” (emphasis added). The Board believes it clear from the totality of the Engineer Track’s written statement that the conversation between the Engineer Track and the Claimant did not center on the question of whether a non-CSX employee had “used” the Claimant’s room, but whether such an individual had “stayed” with the Claimant. The Board believes that a fair inference from the portion of Engineer Track’s statement dealing with the Claimant’s questioning him about a visitor is that the Claimant was making a distinction between someone visiting

him and someone staying with him.

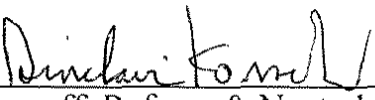
Because the record does not establish that the Claimant gave a false and/or misleading statement to the Engineer Track, the Board concludes that the dismissal of the Claimant cannot be sustained. He shall therefore be reinstated to his former job. Nevertheless for the Claimant, almost immediately after his conversation with the Engineer Track, where he was warned that his son was not allowed in the room except perhaps as a visitor in the early evening hours, to have permitted his son to come into his room in the morning for the purpose of taking a shower, at a time when the housekeeping staff was likely to come to clean the room, was extremely poor judgment and bordered on insubordination. For this reason he will not be awarded any back pay.

A W A R D

Claim sustained in accordance with findings .

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the award is transmitted to the parties.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
January 9, 2009