

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated September 22, 2008, B. J. Thiebeau ("the Claimant") was instructed to attend a formal Investigation on October 2, 2008, in the CSX Great Lakes Division office in Indianapolis, Indiana, with himself as principal, "to develop the facts and place your responsibility, if any, in connection with information that I received on September 5, 2008, wherein you may have been occupying lodging facilities on numerous dates between January 7, 2008 and July 15, 2008, without authority and at the Carrier's expense using your Corporate Lodging Consultants card (CLC)." The letter stated that the Claimant was "charged with conduct unbecoming a CSX Transportation employee, dishonesty, fraud, unauthorized use of company provided credit card, and possible violations of, but not limited to, CSX Operating Rules - General Rules A, General Regulations GR-2, as well as CSX Code of Ethics Policy, and CSX Transportation Travel Policy regarding proper use of the corporate lodging card." The letter confirmed that the Claimant was being withheld from service pending the outcome of the Investigation. By mutual agreement between the Carrier and the Organization the Investigation was postponed to October 16, 2008.

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.

The Claimant began his employment with the Carrier's predecessor on April 21, 1975, as a contract employee. At some time thereafter he was made a management employee and, according to the record, "came to CSX at split date in June of '99." At that time he was the Roadmaster at Winchester, Indiana, where he remained until he was promoted to Engineer of Track in Cayce, South Carolina, in April, 2007.

According to a written report introduced into evidence in this proceeding, on June 11, 2008, Assistant Chief Engineer M. D. Ramsey highrailed track in the CN&L subdivision together with the Claimant and a Roadmaster and found numerous problems on the rails as a result of which he issued three slow orders. The Claimant was instructed to work with the Roadmaster to remove the slow orders by having welders cut and adjust the rail. The Claimant was informed that the incident would lead to a letter of instruction/caution in his file.

Assistant Chief Engineer Ramsey instructed the Claimant during the 2008 Jamboree (6/30/08 - 7/8/08) to make a thorough track inspection on the CN&L subdivision. At the end of the Jamboree the Claimant, the Roadmaster, and the Assistant Roadmaster were instructed by Mr. Ramsey to cover the CN&L subdivision. On July 24, 2008, a derailment occurred at Joanna, South Carolina, in the CN&L subdivision that resulted in \$296,800 damages. The cause of the derailment was determined to be "Track alignment irregular (buckled/sun kink)." Mr. Ramsey investigated the derailment and

determined that the Claimant did not highrail the CN&L or make any inspections as instructed. He further concluded that the irregular track alignment was something that would have been found by a proper highrail track inspection of the subdivision.

According to the aforementioned written report in evidence, on July 27, 2008, Assistant Chief Engineer Ramsey recommended to the Chief Engineer that "Based on Mr. Thiebeau's failure to follow specific instructions; failure to insure CSXT (CWR) Procedures were followed; and failure to properly train, coach, and guide his Roadmaster and Asst. Roadmaster," Mr. Thiebeau be terminated immediately as an Engineer of Track on the Florence Division.

Mr. Ramsey put the Claimant on administrative leave. When he offered to drive the Claimant home, the latter told him that he did not have a home, that he had been staying in a hotel since he had come there to take the job of Engineer of Track. As a result of this information, Mr. Ramsey asked Darrell Murphy, Director of Operations Support, Jacksonville, Florida, and the charging officer in this proceeding, to retrieve the Claimant's corporate lodging records. Mr. Murphy checked the Claimant's ID record on the computer and saw that he was still listed with a Union City, Indiana, address, although he had been in Cayce, South Carolina, for over a year.

Mr. Murphy then pulled up the Claimant's record on the Corporate Lodging Consultants, Inc. ("CLC") website, the organization that administers the Carrier's corporate lodging program. It showed that as of the 207th day of the year, July 25, 2008, the Claimant had charged 152 nights on his CLC credit card, to be paid for by the Carrier. Many of the hotel stays were for consecutive days: 29 consecutive days from January 7 through February 4, 2008; 9 consecutive days from February 6 through February 14, 2008; 28, from February 21 through March 19, 2008; 21, from March 21 through April

10, 2008; 18, from April 20 through May 7, 2008; 9, from May 12 through May 20, 2008; and 36, from June 4 through July 9, 2008.

In connection with his relocation from Indiana to Cayce, South Carolina, the Claimant had been given lump sum payments totaling \$11,597.85 between June 13, and September 11, 2007, to cover his relocation costs. After June, 2007, he was not permitted to charge hotel stays to his CLC card except for business purposes. The \$11 thousand plus he received from the Carrier was supposed to cover any lodging costs incurred in connection with his relocation. As noted, he was allowed to use his CLC in connection with business travel, which would also include the handling of any emergency that might come up. CLC has designated a number of approved hotels and motels throughout the country where it has negotiated special rates for Carrier employees to stay. Mr. Murphy testified that there is no written policy that specifies how far an employee should be away from his headquarters location to stay at CLC lodging at the Carrier's expense. However, he stated, the rule of thumb followed by all the managers he has ever worked with is that for a distance of 60 to 75 miles or an hour or an hour and a half drive, one would be expected to return home unless out extremely late on a derailment or similar emergency. Mr. Ramsey stated that an employee should be about an hour and 15 minutes or an hour and a half—maybe 70 to 75 miles—from headquarters before using corporate lodging. Mr. Murphy testified that once the Claimant received his first relocation monies in June, he could not stay in Cayce, his headquarters city, and charge it to the company.

The CLC records checked by Mr. Murphy showed that the Claimant stayed in CLC lodgings at Carrier expense three nights in West Columbia, located three miles from Cayce, and 15 nights in Columbia, situated five miles from Cayce. He stayed three nights in Orangeburg, located 38 miles from Cayce, and seven nights in Sumter, 50 miles from

Cayce. The Claimant's off days from work were Saturdays and Sundays. The only times in the normal course that he might have occasion to use his CLC card for a Saturday or Sunday would be once every six weekends when he was assigned weekend duty. Mr. Murphy testified, "Even on those weekends that you're on weekend duty unless there would be a big wreck someplace that you had to go at some distance, it would still be expected that you would stay at your home residence and not be staying at Corporate Lodging facilities charged to the company."

CLC records showed that on 20 weekends between January 1, and July 15, 2008, the Claimant used corporate lodging at Carrier expense on consecutive days of Friday, Saturday, and Sunday. On an additional weekend he used Corporate lodging on Sunday. The 21 weekends included the following consecutive Sunday dates: January 13, 20, 27, February 3, 10; February 24, March 2, 9, 16, 23, 30, April 6; April 20, 27, May 4; June 8, 15, 22, 29, July 6.

Monica Hopson, Director of Human Resources for the Engineering Department of the Carrier since August 1, 2008, and previously Human Resources Manager for the Carrier's Commercial Department, was one of the managers involved in the decision to terminate the Claimant's employment as a manager. Ms. Hopson interviewed the Claimant by telephone in a conversation that she estimated took between 30 and 45 minutes on August 25, 2008. At the time the Claimant was on paid administrative leave.

In their conversation, Ms. Hopson testified, she asked him what his understanding was of the policy with regard to relocation. He said that he knew that he was allowed to stay at CLC lodging until he received his check and that if he was not working, he was not to stay at CLC. He said that he spent time on different people's territories because they were less senior and less knowledgeable of their duties, and he was helping to cover

their territory. According to Ms. Hopson he said that on some weekends when he stuck around to help he was not doing much, but maybe 80 to 85 percent of the time he was. He told Ms. Hopson, she testified, that he spent a lot of time in Charleston because there were a lot of problems there. He asked if it would make a difference if he paid the money back. He also said that the Carrier would not even have known that he was staying at CLC lodging if Mr. Ramsey had not taken him back to the hotel after the incident that occurred.

Ms. Hopson testified that the recommendation of the leadership team of which she was a part that the Claimant “be disciplined by termination from management position as an Engineer of Track” and that he also “be held out of service from exercising his seniority pending a hearing under the collective bargaining agreement.”

Ms. Hopson worked together with an investigator in preparing the written report referred to above regarding the situation that caused Mr. Thiebeau to be placed on administrative leave. The report details the incidents described above of the defects in the track found by Assistant Chief Engineer Ramsey on June 11, 2008; the letter of instruction/caution placed in Mr. Thiebeau’s file; the instructions given to Mr. Thiebeau in the 2008 Jamboree to highrail and make a thorough track inspection on the CN&L subdivision; the derailment of July 24, 2008, on the CN&L subdivision and the resulting investigation which found that Mr. Thiebeau did not highrail the CN&L and did not make any inspections as instructed and determined that the derailment was directly caused by irregular track alignment that would have been found by a highrail track inspection of the subdivision. The report contained the following written recommendation:

Recommendation:

Based on the situations cited above, where EOT Bill J. Thiebeau has failed to

perform the specific duties of his position and where he has violated company policies (Corporate Lodging Card abuse, Relocation Policy violations, and Conduct Unbecoming a CSX Manager) it is recommended that Mr. Thiebeau be disciplined by being terminated from his management position as an Engineer of Track, and also held out of service from exercising his seniority, pending a hearing under the collective bargaining agreement.

Claimant Thiebeau testified that he was an Engineer of Track beginning in April, 2007, and prior thereto had been a Roadmaster for 12 years. Before then he held a number of bargaining unit positions including Trackman, Welder Helper, Welder, Foreman, and Welder Foreman. He has worked for the railroad 33 years and five months, the Claimant testified.

Asked by the hearing officer where he stayed during his off time from January 1, 2008, until he was placed on administrative leave, the Claimant testified, "During my off time, I paid for a hotel usually around Columbia somewhere." In explanation of his statement to Ms. Hopson that 80 to 85 percent of the time he used his CLC card for work-related events, the Claimant explained that he used to go check out a Roadmaster on the weekends, such as in Charleston, and would not spend all eight or nine hours at the location. He would be there in the morning, maybe, and walk the Roadmaster's territory with the inspectors that were there and then go back to the motel. So he didn't spend all day on every weekend when he was out on location as he would the normal Monday through Friday workday, he stated.

The hearing officer asked the Claimant if it was his testimony that on consecutive weekends that he used CLC lodging he worked straight through. He answered that with the problems he was having in getting a house built and with the relocation companies he really didn't have much else to do. "So," the Claimant testified, "I for the most part stayed working[,] had a lot of young Roadmasters[,] especially Charleston and Clinton.

So I spent a lot of time at both of those locations,” the Claimant continued, “and it was easier just to stay there than to do a whole bunch of driving because I was at those locations for the biggest part of the day.” Nobody ever discussed the lodging policy with him with regard to travel distance, the Claimant stated, so he just stayed where he was working instead of doing all the traveling. He acknowledged that Columbia and West Columbia, South Carolina, were within his headquarters area at Cayce, South Carolina. Not having been told anything about a policy regarding mileage or travel time, the Claimant testified, he did not think there was a problem with his using CLC lodging in Orangeburg with the hours that he was putting in. He would not take exception to one of his managers staying in a motel within 38 miles of his headquarters, the Claimant testified. “As a Roadmaster I used to do that also,” the Claimant stated. “So that doesn’t seem unacceptable to me.” The only days that were improperly charged to CSX, the Claimant testified, were the 18 days that he stayed in Columbia or West Columbia, South Carolina.

The Claimant testified that he had a lot of problems with trying to sell his house in Indiana, that he could not get a realtor or an appraiser because of where he was living. There was also a delay because the Carrier changed relocation companies in November. In January, 2008, the builders started putting up his house, and it was completed the second or third week in July. He was to have a closing when the situation came up with Mr. Ramsey, the Claimant testified, and everything was put on hold.

In his closing statement the Claimant said that he always wanted to do more for the company and that the Carrier gave him the opportunity to be an Engineer of Track in South Carolina. He is grateful for the job, he stated, and for the confidence shown in him in letting him do it. He was new in the job and did not really have the training for it but

was helped out by Mr. Fowler and the staff down there. He tried to help the younger Roadmasters and to do the job that he was hired to do for CSX. He realized, he asserted, that staying weekends or too close to Cayce was wrong, and he is sorry for doing that. He noted that he offered to pay the lodging money back when it was first brought to his attention, and he is still offering to do so. However, he said in his defense, with his wife not being there and their building a house, he just thought that "getting into the job and helping my situation and CSX's was the thing to do and that's what I was doing." He was not aware, he stated, about what some of the non-written policies were about where to stay according to the distances. It was never brought to his attention, he said, that he should not stay at Orangeburg, or Clinton, or North Charleston. In trying to make a difference with his Roadmasters, he stated, he overlooked some very serious things that he should not have. He insisted that in his 33 years and five months with the railroad he never meant to do anything to discredit the railroad or himself or to defraud the railroad in any way, shape, or form. He was truly sorry, he declared, for any indiscretion regarding where he stayed.

In its closing argument, the Organization stresses the fact that Mr. Thiebeau has been an employee for the railroad for more than 33 years. He is still a relatively young man, the Organization asserts, and has a lot to offer the railroad. The Organization notes all of the jobs that the Claimant has held with the railroad and expresses the belief that he has a lot to offer the railroad. The fact that Mr. Thiebeau has offered to give the money back should be taken into consideration, the Organization states. He has got a wife and a family, the Organization asserts, and can still be a valuable employee if given the chance to do so. Others have also been in his situation, the Organization states, and it asks that his seniority be restored so that he can continue to be a good and valuable employee of

the railroad.

Following the hearing, the Assistant Chief Engineer Maintenance of Way - South, by letter dated November 5, 2008, notified the Claimant of his determination that he (the Claimant) had been given a hearing in accordance with his contractual due process rights and that review of the transcript showed that the charges placed against him were valid and proven. The evidence, the letter stated, established that the Claimant violated the cited CSX Transportation Operating Rules and Regulations, CSX Code of Ethics, and the CSX Transportation Travel Policy pertaining to the use of the corporate lodging card. The letter stated that the discipline to be assessed was "immediate dismissal in all capacities from CSX Transportation."

By letter dated November 15, 2008, the Organization appealed the Carrier's decision. The Carrier replied to the appeal by letter dated January 14, 2009. In its reply the Carrier summarized the testimony of all witnesses in the Investigation. It noted that the Claimant admitted using his lodging card inappropriately for at least 18 stays within three to five miles of his headquarters city. The amount involved for these stays, the Carrier stated, was approximately \$1,750. In addition, the Carrier pointed out, the Claimant stayed 56 times in facilities that were within 38 to 75 miles of his headquarters, at a cost to the Carrier of around \$2,500. He had made no arrangements for temporary housing while his house was under construction, the Carrier asserted, but, instead, in violation of company policy, used corporate lodging to supplement his housing. The Carrier argued that dismissal for the Claimant's type of offense was justified and supported by numerous Board awards. The Carrier denied the appeal in its entirety. Thereafter, instead of processing the case in the regular manner before the National Railroad Adjustment Board, the parties, with the Claimant's authorization, listed the case

on their expedited discipline board, Public Law Board No. 7120.

The Claimant testified that when he was not staying in corporate lodging he paid for a hotel around Columbia, South Carolina. This shows that he knew that he did not have a blanket right to avail himself of corporate lodging merely because he did not yet have a permanent residence. The 18 stays he charged to his CLC card for stays in the Columbia-West Columbia—only three to five miles from his headquarters city—were clearly a knowing violation of the CSX travel policy.

In addition, the Claimant did not dispute the testimony that he was scheduled for weekend duty approximately once every six weeks and that such assignment did not necessarily mean that he would have to stay away from home overnight. Yet the evidence shows that he charged motel stays to his CLC card on a number of consecutive weekends. He attempted to defend his weekend charges on the basis that on weekends he would go to check out a Roadmaster, for example, in Charleston, where he might spend a morning walking the territory with the inspectors and then go back to his motel.

The Claimant, however, presented no corroborative testimony that he worked on all, or even any, of the many weekends for which he charged the Carrier for lodging. In addition, with his years of service in management he had to be aware that, without special permission, he was not allowed to charge the Carrier for lodging on his days off. This was not an employee on layoff who had no money to pay for his lodging—the example cited by the Organization in its closing statement. This was an individual who had been given more than \$11,000 to cover relocation expenses, in addition to his regular salary. The evidence establishes that the Claimant acted knowingly and intentionally with regard to a significant number of the lodging stays that he improperly charged to his corporate lodging card over a period of months.

The Board takes no pleasure in sustaining the dismissal of a 33-year employee. However, the Claimant has charged the Carrier for numerous lodging stays over a period of months that he knew were not valid charges. That is considered dishonest conduct for which dismissal is often administered as a disciplinary penalty. The decision whether or not to exercise leniency because of the Claimant's long service must rest with the Carrier. In this case because dishonesty was involved, and perhaps also because of the incidents that caused the Carrier to place Claimant on administrative leave prior to learning of the violations of the CSX Business Travel Policy, the Carrier has chosen not to exercise leniency. There is reported Board authority in support of the Carrier's disciplinary decision. See, for example, Third Division Award No. 32208 (dismissal of long-service employee upheld for falsification of travel expenses; prior disciplinary record also taken into consideration).

The Board can find no proper basis in the record for overturning or modifying the Carrier's disciplinary action in this case. The claim will be denied.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.


Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
December 9, 2009