

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 18, 2009, D. Murphy, Director of Operations, notified M. S. Goble (“the Claimant”) to attend a formal Investigation on September 28, 2009, in the CSX Headquarters Building in Jacksonville, Florida, “to determine the facts and place your responsibility, if any, in connection with information that I received on Monday August 31, 2009 regarding your unauthorized use of the Corporate Lodging Consultants (CLC) ‘Check Inn’ card assigned to you on July 17, 2007.” The letter stated that the Claimant was “charged with conduct unbecoming an employee of CSX Transportation, failure to comply with instructions, unauthorized use of a corporate lodging facility and possible violations of, but not limited to, CSX Transportation Operating Rules – General Rule A; General Regulations GR-2 and CSX SPT Lodging (CLC) Policy, as well as the CSX Corporation Code of Ethics.” The letter also confirmed that the Claimant was being withheld from service pending the outcome of the Investigation. At the request of the Organization, the hearing was postponed until November 17, 2009, and the hearing location changed to Atlanta, Georgia.

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's service date is July 23, 2007. At the time of the Investigation he was employed as a Trackman on a system production team. D. Murphy, the charging officer, is Director Of Operations Support for the Carrier in Jacksonville, Florida. His duties include overseeing corporate lodging for all contract employees. In the end of August, 2009, he received a telephone call from the field asking him to look at the corporate lodging stays for the Claimant.

Mr. Murphy pulled up the Claimant's pay records and saw that he was off sick after part of the day on July 1 until August 24, 2009, when he came back to work. Mr. Murphy checked corporate lodging records for the Claimant between July 2 and August 24 and found that on 19 days the Claimant stayed in a Ramada Inn in Paintsville, Kentucky, while not in pay status. "This Ramada Inn," Mr. Murphy testified, "also was appearing as Mr. Goble's residence." The lodging charges to the Carrier for the 19 days

at the Ramada came to between \$1,000 and \$1,100. These dates were as follows: July 8, 10, 11, 12, 13, 14, 15, 16, 17, 27, August 2, 3, 4, 5, 6, 9, 10, 11, 21, 2009.

Mr. Murphy reviewed the different rules and policies that were listed in the charge letter as possibly violated by the Claimant. He noted that General Rule GR-2 states that “Employees must not: . . . 4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless, or incompetent.” Using a corporate lodging hotel room and billing it to the Company when not working, Mr. Murphy stated, is disloyal and dishonest. It is also insubordinate, he asserted, for not following the rules and instructions provided to all CSX employees.

Mr. Murphy pointed out that the SPT Lodging (CLC) Policy states on page 3, “The Check Inn card is to be used only for lodging expenses that an employee is entitled to in accordance with the prevailing agreement. . . .” The agreement, Mr. Murphy stated, does not provide for lodging for employees that are not working.

Mr. Murphy called attention to provisions in the Carrier’s Code of Ethics that instruct employees to seek advice of a supervisor when unsure of what CSX standards mean or how they apply to one’s job; to safeguard CSX property from misuse or theft; to act in the best interests of the Company’s shareholders; not to use corporate property for personal gain; to use good judgment to safeguard the Company’s assets from misuse or waste; and to be aware that theft, carelessness, misuse, and waste of Company property have a direct impact on profitability. Staying in a hotel room when you’re not working

and charging it to CSX, Mr. Murphy testified, directly impacts Company costs and violates several of the provisions of the Code of Ethics.

Mr. Murphy testified that there is nothing in the rules permitting an employee who is off work for an extended period of time to stay in corporate lodging facilities at the Carrier's expense. A team may stay over a weekend between work cycles after making proper arrangements such as advance registrations and informing the timekeeper so that their weekend travel money is not paid to them. That applies only to an actively working employee for his rest days, he explained, but not to an employee that is off work sick.

On cross-examination Mr. Murphy testified that to the best of his knowledge all employees get a copy of the SPT Lodging Policy at the first part of the year as the teams kick off. He did not have documentation, he stated, to show that the Claimant received a copy of the policy. New employees, Mr. Murphy stated, get a CLC card at the training center. At that time, according to Mr. Murphy, the corporate lodging policy is reviewed with the new employees.

The Claimant testified that he held the Trackman position at the time of his dismissal for about a month and a half. He acknowledged that he was not working from July 2 through August 22, 2009. He admitted that he stayed at the Ramada Inn on the days indicated and that he did not have permission from a foreman or anybody else to stay on the CLC card. Asked to "please state any facts beyond what we've talked about already that might explain your stays in the CLC hotel," the Claimant stated, "Roughly I

don't recall some of the days that are on there. The days that I do recall are, I didn't have no other place to stay; I had to have somewhere to stay."

The Claimant stated that he did not recall receiving a copy of the SPT Lodging Policy. He stated that he was not part of the SPT team at the beginning of the year when the team started up. He did not come out in the field and become part of the SPT team until April or May, 2009, he testified. When he joined the team, he stated, he was not given a copy of the SPT Lodging Policy. He was unaware of any instructions on how to use the CLC card, he testified.

In response to questions by the hearing officer, the Claimant testified that he was given a CLC card around the time that he hired in on July 21, 2007. Asked whether at the time he was given the card the Carrier discussed with him the rules and responsibilities for using the card, he stated, "No sir; I don't recall." Asked by the hearing officer whether he thought that it was acceptable to use a CLC card or any other Company credit card for personal use, he testified, "No sir."

In a closing statement the Claimant said, "I guess in closing I'd like to apologize on behalf of myself on wasn't understanding what I was doing at the time as far as being, you know not abiding by the rules and things but I am willing to pay the full amount of the hotel bill and you know paying the full restitution on that and I'm basically sorry for the you know for what I've done."

In closing argument the Organization representative noted that the Claimant is

willing to make restitution and asserted that the Claimant has a clear record with no violations, is a good asset to the Company, and did not have a good and clear understanding of the policy. He made a mistake, the Organization asserts.

There are some unanswered questions in the record that could have some connection with the fact that the Claimant stayed at the Ramada Inn on the dates listed above. The charging officer, Mr. Murphy, testified that when he pulled up the Claimant's corporate lodging records between July 2 and August 22 he found some 20 stays by him at the Ramada Inn in Paintsville, Kentucky, and "The Ramada Inn also was appearing as Mr. Goble's residence." (Tr. 4-5). Why would the Ramada Inn appear as the Claimant's residence in the corporate lodging records? The charge letter was addressed to the Claimant in Sitka, Kentucky, and not Paintsville, Kentucky, where the Ramada Inn is located. In addition, all of the Ramada Inn receipts introduced into evidence regarding the Claimant's stays show his home address in Sitka, Kentucky. The Claimant therefore was not giving a false address to the hotel. The fact that the charge letter was addressed to the Claimant in Sitka also shows that he not give the Carrier a false address as his residence. Why then did the charging officer testify that the Ramada Inn appeared in the corporate records as the Claimant's residence? This is unexplained in the record.

The Claimant stated that the days he recalls staying at the Ramada Inn "I didn't have no other place to stay; I had to have somewhere to stay." (Tr. 14). Why didn't the Claimant have anywhere else to stay? The Board takes arbitral notice that Sitka is only

seven miles from Paintsville. Why couldn't he stay at his residence in Sitka? And if he was on sick leave from the Carrier why was he not at home or in a hospital? What was he doing at the Ramada Inn? These questions were not addressed at the hearing. It is true that not only the Carrier, but also the Organization, which represented the Claimant, did not address them. But the burden of proof in a dismissal case is on the Carrier, not the Organization. The purpose of an Investigation is to obtain all relevant facts.

The charges against the Claimant included violation of the Carrier SPT Lodging (CLC) Policy. But the Carrier did not provide substantial evidence that he ever received a copy of the policy. The Carrier's only witness, the charging officer, acknowledged that he did not have documentation to show that the Claimant received a copy of the policy (Tr. 12). He testified that employees on SPT teams get a copy of the policy at start-up meeting the first part of each year. The Claimant testified that he did not join the SPT team until April or May, 2009, and denied receiving a copy of the policy (Tr. 15).

In addition, there is no evidence in the record that the Claimant ever made use of the CLC credit card for lodging prior to April or May, 2009, when he was assigned to the SPT team. The short period of usage and the absence of a copy of the SPT Lodging Policy could have contributed to a failure on the part of the Claimant to fully comprehend the seriousness of using the card for any reason other than business purposes. The Board further notes that in his two years of service with the Carrier prior to the present incident the Claimant had a clear record with no formal discipline.

The unanswered questions, the short period of usage of the CLC card, the lack of evidence that the Claimant ever received a copy of the SPT Lodging Policy, and his work record without prior discipline persuade the Board that dismissal is excessive discipline in the present case. Rather the case should be treated as other awards in which the employee was charged with falsification of travel or lodging expenses and, in lieu of dismissal, the Board ordered a long suspension and provided the claimant with a second chance. See Third Division Award No. 37678 (2006); Special Board of Adjustment No. 976, Award No. 143 (1987); Public Law Board No. 5622, Award No. 75 (2003).

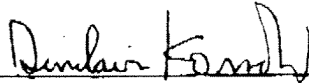
Plainly, however, these awards are the exception, and employees must be aware that unwarranted claims for travel or lodging expenses may be considered dishonesty and subject the employee to dismissal. See Third Division Award No. 39310 (2004). The Claimant has been given the benefit of the doubt here because of the unusual circumstances of his case, the reasonable possibility that he was not fully apprised of the applicable travel policy, and his clear record. It is now up to him to show that he was deserving of the benefit and that there is no cause to question his honesty and integrity or his commitment to fully abide with all rules and regulations of the Carrier. The Claimant shall also fully reimburse the Carrier for the lodging expenses improperly charged to his CLC card. A reasonable payroll withholding arrangement shall be made between the Carrier and the Claimant for that purpose.

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 date the signed award is transmitted to the parties.

A handwritten signature in cursive script, appearing to read "Sinclair Kossoff", is written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois

April 7, 2010