

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 November 18, 2009, Brian Holder, Manager System Production Teams, notified D. B. Griley (hereinafter “the Claimant”) to attend a formal Investigation on November 27, 2009, in the conference room of the CSX Headquarters building in Jacksonville, Florida, to determine the facts in connection with the Claimant’s alleged unauthorized use of his Corporate Lodging Consultants travel credit card that the Carrier issued him. 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 noted that the Claimant was being withheld from service pending the outcome of the Investigation. At the request of the Carrier the hearing was postponed to February 9, 2010.

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, whose service date is October 1, 1973, was employed by the Carrier at the time of the Investigation as an Assistant Foreman on a traveling team. The Charging Officer learned of a problem with the Claimant's use of his Corporate Lodging Consultants (CLC) credit card issued to him by the Carrier for purchase of lodging when traveling on Carrier business. The manager of a motel where Carrier employees stay called the Charging Officer for clarification of how to handle the rooming list. The Charging Officer went to see the motel manager.

In his meeting with the hotel manager the Charging Officer learned that the Claimant had stayed at the motel on a weekend when he was not performing work for the Carrier and had used his CLC card to pay for his lodging. The Charging Officer then obtained the lodging usage records for the Claimant for 2009 and found that on 37 occasions between March and October he had stayed in various motels at Carrier expense on days that he did not work. Almost all of the days were on a Friday or Saturday. Employees are permitted to stay weekends at Carrier expense if they notify the timekeeper or their supervisor, who will then block any payment of travel expenses for that weekend. On the weekends that the Claimant paid for his lodging with his CLC card, although he was not scheduled to work, he did not notify the timekeeper or supervisor so that no travel expenses would be authorized.

The Charging Officer testified that he considered the Claimant's conduct to be

dishonest and disloyal in violation of General Regulations GR-2. His conduct, the Charging Officer asserted, also violated the provisions of the CSX Code of Ethics that require an employee to keep the Carrier's assets secure and not to use corporate property for personal gain.

Asked on cross-examination how he knew whether the Claimant worked on the 37 days in question, the Charging Officer stated that an assistant foreman is not allowed to work without authorization. The SPT Lodging (CLC) Policy, the Charging Officer testified, was read to employees at start-up time. It was gone over again on July 6, 2009, during a shutdown meeting after the last day of the jamboree. One of the provisions in the CLC Policy is that the CLC card "is to be used only for lodging expenses that an employee is entitled to in accordance with the prevailing agreement." The Code of Ethics was also gone over at that time, the Charging Officer stated.

The Claimant testified that he has been an Assistant Foreman off and on since 1985. He acknowledged that he used his CLC card on the 37 dates specified by the Charging Officer during an eight-month period. Asked whether he "used the CLC card for personal use over the weekends and the various dates outlined here," he answered, "Yes." He admitted that he did not ask his supervisor for permission to use his card on the dates in question. He stated that he believed that the CLC Policy was reviewed during start-up, but that he was not sure because it was over a year ago. He answered, "No sir," when asked if he thought that it's acceptable for an employee to use a company credit card for personal use. At no time in his career, the Claimant testified, has he ever been confused on the proper use of a CLC card.

In response to questions from the Organization representative, the Claimant testified that he did not sign for receipt of a copy of the CLC Policy at the start-up meeting in 2009. Nor, he stated, did he sign for a copy or acknowledge that he understood the Policy on July 6th in a shutdown meeting. He has offered to make restitution for the days involved, the Claimant testified, but his offer was not accepted.

The Claimant testified that he did such work as washing and refueling vehicles on the weekends and other days in question. He also kept the payroll sheets and filled them out on the weekends and turned them in to the timekeeper on Monday mornings, he stated. He was not compensated either for his work on the vehicles or the payroll sheets, the Claimant testified. The timekeeper, the Claimant stated, knew that he was doing this work on the weekends. Because he was doing this work on the weekends, the Claimant testified, he would not consider his use of the CLC card to be for personal use but for company business.

He does not have any of the payroll sheets that he did work with on weekends, the Claimant stated, because he turned them into the timekeeper on Monday mornings, who then entered the information into the computer for the supervisor to approve or disapprove. The hearing officer asked the Claimant what days he worked and did not get paid for. He answered, "Sir, exactly everyday no I cannot, most of these days when I stayed on the weekends, I gassed up vehicles, cleaned the garbage off of them so it wouldn't be blowing all over the road, like I said, did the payroll and that type of stuff to turn in and my understanding was that a room would be taken care of, on Saturdays." At no time, the Claimant testified, did he notify his supervisor that he took exception to the correctness of the payroll.

In a closing statement the Claimant asserted that he was under a misunderstanding in using the CLC card from what he had been told by some fellow employee. "I have been a very good employee for over 36 years," the Claimant stated, and added that it was a bad thing to take someone else's word of mouth.

In its closing statement, the Organization noted that at the start of the hearing it objected that the Claimant had to wait 74 days to have a hearing. In addition, the Organization asserted, the Carrier provided no signed documents by the Claimant showing that he received and understood the CLC Corporate Lodging Policy and the Code of Ethics. The Organization noted that the Claimant offered to make restitution and stated that he has been a good employee for 36

years with no prior incident on his record.

Following the close of the hearing the Assistant Chief Engineer Production Teams notified the Claimant that a review of the transcript of the Investigation showed that “sufficient proof exists to demonstrate that you were guilty as charged and were in violation of the cited rules” by using “a company lodging card for personal use while not on duty.” The discipline to be assessed, the Assistant Chief Engineer stated, was “immediate dismissal in all capacities from CSX Transportation.”

The Organization has objected to the two-and-one-half-month delay from the mailing of the charge letter to the Claimant to the holding of the hearing. At the hearing the hearing officer explained that the reason for the delay was because of a shutdown. The correspondence in the case regarding the Investigation stated that the request by the Carrier for a postponement was “approved by the Brotherhood” No evidence to the contrary was provided at the hearing. Under these circumstances the Board finds that the delay in holding the hearing was not a violation of the collective bargaining agreement and is not grounds for modifying the discipline imposed.

The Organization argues that the Claimant was not furnished a copy of the SPT Lodging (CLC) Policy. However, the Claimant acknowledged that he was familiar with the rules pertaining to the use of a CLC card when he answered “No sir” to the hearing officer’s question of whether he has “ever been confused on the proper use of a CLC card.” The attempt to show that the Claimant was working on the days in question because he washed, cleaned, or fueled company vehicles was not convincing. The Claimant did not ask to be paid wages for those days, and there is no rule that an employee is entitled to free lodging in exchange for fueling or cleaning Carrier vehicles. It was not disputed, moreover, that an employee is not authorized to work outside his regular hours without the permission of his supervisor. The Claimant did not ask for or receive permission to work on the days in question. Plainly the Claimant improperly

used his Carrier-issued CLC credit card to obtain lodging for personal use on the days in question. In so doing he violated the CSX SPT Lodging (CLC) Policy, the company's Code of Ethics, and General Regulations GR-2 as charged by the Carrier.

The Claimant's violations were very serious. He is, however, an employee with 36 years of service with no prior infraction on his record. His work record with the Carrier is unblemished. There is published authority supporting the giving of a second chance to a long-service employee with a clean record who has been found guilty of the offense of falsification of travel expenses. See Third Division Award No. 37678 (2006) (dismissal of 25-year employee with no prior discipline for submitting 9 fraudulent travel claims in 2½ month period held to be "especially harsh, considering the Claimant's long and unblemished work record." Employee reinstated with seniority unimpaired but without pay or benefits for time lost.")

It is the Board's finding that under the particular circumstances of this case dismissal was an excessive penalty and that the Claimant should be given a second chance to prove that he can be a reliable employee in light of his unblemished record over 36 years of service. He shall be reinstated without loss of seniority but without back pay. He should be aware, however, that any further deviation from the highest standards of honesty and integrity will not be tolerated and will place his continued employment with the Carrier at serious risk. Nor should any other employee view the disposition of the Claimant's case as an indication that dishonesty will be tolerated in matters pertaining to travel. There are many cases, including decisions by this Board, where dismissal has been upheld for falsification of travel or lodging expenses. Further the Claimant shall be required to reimburse the Carrier for all improper charges to his CLC card on the dates in question. He shall also reimburse the Carrier for any travel expenses he received for the weekends in question that he was not entitled to. He shall enter into a reasonable wage

deduction agreement with the Carrier for those purposes. The Claimant's time off work shall be considered a suspension.

A W A R D

Claim sustained in accordance with the 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", written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
May 18, 2010