

AWARD NO. 122
Case No. 122

Organization File No. C.A. Capers-discipline-30days-09
Carrier File No. 2009-055326

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's decision to impose discipline in the form of a thirty (30) day actual suspension upon Mr. C. Capers for the alleged violation of CSX Operating Rules A and GR-2 (Part 4) in connection with his alleged unauthorized use of his Corporate Lodging Card for alleged unauthorized overnight stays at hotels in Cary, North Carolina and Apex, North Carolina on the dates of January 10, 21, 25, March 25, July 9, 22, August 4, 7, 9, October 28, 29, November 5, 26 and December 1, 2008 was on the basis of unproven charges and was arbitrary, capricious and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Capers shall have the charges expunged from his record and he shall be compensated for all earnings and other benefits that he lost as a result of the improper suspension and discipline.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

At all times relevant to this dispute, Claimant was assigned as a Track Inspector at Apex, North Carolina. His territory extended from Mile Post 245.8 at the Hamlet Terminal to Mile Post 156.8 at the Southern Junction of the Raleigh Yard and he would regularly start his tour of duty at Hamlet, North Carolina. Claimant has been employed by the Carrier since June 1, 1999. On various dates, Claimant used his Corporate Lodging Card to obtain overnight accommodations at the LaQuinta Inn at Cary, North Carolina. Apex is located approximately four miles from Cary and approximately 95 miles from Hamlet.

By letter dated December 29, 2008, Claimant was directed to attend a formal investigation at which he was charged with the unauthorized use of his Corporate Lodging Card on 14 occasions from January 10 through December 1, 2008. Following the investigation, Claimant was issued a thirty day suspension.

A review of the record of the investigation shows that there were dates covered by the charge on which Claimant had been specifically authorized to use overnight lodging. On others, Roadmaster Kirkland testified that the circumstances connected with his duties permitted him to obtain lodging. He explained that employees are empowered to make such decisions when safety concerns dictate. He further explained that employees are not empowered to decide to obtain lodging for their own convenience or to avoid the payment of overtime.

Claimant testified that there were dates that he needed to stay overnight because of safety concerns, but acknowledged that there were other dates when he determined that it would be more economical for the Carrier if he stayed at the motel rather than incur overtime.

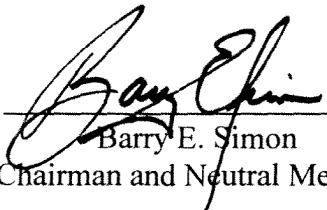
The discipline letter issued to Claimant identified the dates that were covered by the investigation, but stated, “the facts support and confirm that you had at least eight (8) overnight stays from the above dates that you were not authorized . . .” While it would have been better to cite the dates on which the Carrier found that his stays were unauthorized, we do not find that the failure to do so is a fatal error. At the investigation, it was clear that there were four dates the Carrier believed to be incorrectly cited in the charge. There were, however, eight dates for which Claimant gave no explanation for his staying at the motel beyond saying, “Job related purposes.” Thus, we find that the discipline notice was sufficient to put Claimant and the Organization on notice as to the Carrier’s finding of guilt.

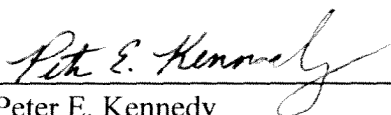
As to the merits of the disciplinary action, we find it significant that the Carrier has stated Claimant’s discipline was for dishonesty. That requires a showing of an intent to deceive. We do not agree with the Carrier’s conclusion that there is evidence of such an intent.

More importantly, it is clear that the Carrier has granted employees such as Claimant a degree of discretion in deciding whether to obtain lodging. Apparently, approval from a supervisor in advance is not required. While the Carrier has expressed some standards as to when lodging might be reasonable, there is no evidence this was communicated to Claimant. Specifically, Claimant may be correct that it would be more economical for the Carrier to pay for a night in the motel than to pay him several hours of overtime, but he apparently was never told that overtime payments would not be a factor in allowing lodging. The Carrier has a duty to make those expectations known to the employees.

Before the Carrier may discipline an employee, it must make the employee aware of the behavior that is expected and the consequences for failing to meet the Carrier's expectations. Here, Claimant believed he was behaving within the parameters set out by the Carrier for his exercise of discretion. By not informing him of the limits of his discretion, the Carrier lacked just cause to discipline him. We will direct, therefore, that the discipline entry be removed from Claimant's record and that he be made whole for wages and benefits lost as a result of the suspension.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Peter E. Kennedy
Employee Member


Robert Paszta
Carrier Member

Dated: January 7, 2013
Arlington Heights, Illinois