

BEFORE
PUBLIC LAW BOARD NO. 7353
CASE NO. 61
AWARD NO. 61

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN vs. CSX TRANSPORTATION, INC.)))))	PARTIES TO THE DISPUTE
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STATEMENT OF CLAIM:

"Claim on behalf of Engineer D.M. Lewis, ID #199194, requesting reinstatement to active service with seniority unimpaired, compensation for all lost earnings since being removed from active service April 27, 2010, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, Stock and Bonus payments, and to have record expunged of all charges relating to the incident made the subject of the hearing held on March 31, 201 at Richmond, Virginia."

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 16, 2009, as amended, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that from November 10, 2009 through January 1, 2010, the Claimant worked yard jobs located in and around the Richmond Terminal. During that time, the Claimant's Corporate Lodging Card (CLC) was charged a total of \$3,667.604 for overnight stays at a hotel located in Richmond, Virginia. The Claimant did not receive prior authorization to use his CLC for this or any other purpose during the subject timeframe. The Claimant was charged with conduct unbecoming in a letter dated February 16, 2010.

The investigation hearing was scheduled for February 24, 2010 but was postponed twice, at the request of the Local Chairman. On March 25, 2010 the investigation was opened. However, neither the Claimant nor his representative were in attendance. Testimony was given at that time, by the Carrier witness, that the Local Chairman had informed him that morning that he could not locate the Claimant. The Local Chairman, through the Carrier witness requested a further postponement. As a result, the Hearing Officer postponed the hearing to March 31, 2010 to allow the Local Chairman an additional opportunity to secure the Claimant's presence. The hearing was reconvened on March 31, 2010. The record of that investigation shows that letters were sent to the Claimant at the address the Carrier had on file. The hearing was recessed to see if the Carrier witness could locate either the Claimant or his representative. When he could not locate them in the vicinity of the hearing, the Hearing Officer proceeded. Evidence given at the hearing proved that the Claimant had charged the hotel room, inappropriately, to the CLC. Further, testimony was given that he was given an opportunity to repay this amount and that, some 2 months later, he still had not done so.

Following the close of the disciplinary investigation, on April 27, 2010 the Carrier dismissed the Claimant from service for violating CSX Transportation Operating Rule G.R.-2.

This Operating Rules states, in pertinent part:

"Employees must not: ...

4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless, or incompetent..."

Carrier's Position:

The Carrier says that the charges against the Claimant were proven in the course of the disciplinary investigation. They say that the Claimant and his representative had multiple and ample times to that appear at the investigation. Their failure to do so, they say, in no way negates either the investigation or the discipline that flowed therefrom.

Organization's Position:

The Organization urges the position taken by the Local Chairman in his appeal of June 28, 2010 wherein he argues that since the Claimant and his representative were not present, the hearing was not fair and impartial as required by the Collective Bargaining Agreement. They also say that the Carrier denied the Claimant's right to be represented at the hearing, as further required by the Agreement, since they failed to notify the Claimant's representative that the hearing would be held in the Claimant's absence.



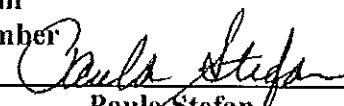
Result:

It is clear that the Claimant is entitled to a fair and impartial investigatory hearing. It is also clear that the Claimant has a right to be represented at the hearing. However it is axiomatic that neither the representative of the Organization nor the Claimant can evade the results of a properly convened investigation hearing by simply failing to attend. To rule otherwise would be to thwart entirely such clauses in Collective Bargaining Agreements.

In this instance, the Carrier gave every opportunity for the parties to attend. They conducted a fair and impartial investigation in the absence of the Claimant and his representative. They placed evidence on the record to prove the charges levied. They then assessed discipline based on the obviously unrefuted record.

AWARD

The claim is denied.

 _____ Gil Gore Vice-President Organization Member	 _____ Roger K. MacDougall Chair and Neutral Member	 _____ Paula Stefan Director Labor Relations Carrier Member
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Dated: 12/21/2012

At: Chicago, IL