

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13444
Docket No. 13288
99-2-97-2-59**

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(International Brotherhood of Electrical Workers
(System Council No. 9
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

- “1. That CSX Transportation, Inc., violated the controlling Agreement when they unjustly suspended and dismissed Communication Maintainer J.M. Casale from service, at Tampa, Florida, effective July 26, 1996, and;**
- 2. That accordingly, CSX Transportation, Inc., should be ordered to reinstate Communication Maintainer J.M. Casale to service with all rights and benefits unimpaired, compensated for all monetary loses sustained, made whole for all health, welfare insurance, pension benefits, including Railroad Retirement and Unemployment Insurance, and for any other benefits that he would have earned or been entitled to account of the unjust dismissal in violation of the Agreement.”**

FINDINGS:

The Second Division of the Adjustment Board, 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On May 29, 1996, the Claimant was notified to appear for an Investigation on June 5, 1996. The notice charged the Claimant with being absent from his work location on May 24, falsifying payroll records by reporting eight hours of work for May 24, insubordination on May 24, and falsifying his April 1996 expense account by reporting expenses at West Palm Beach, Florida, when he was not working in that area. The Hearing was postponed to and held on July 2, 1996. On July 26, 1996, the Claimant was advised that he had been found guilty of the charges and that he was dismissed from service.

The Organization argues that the Carrier failed to prove the charges. The Organization maintains that the Claimant adequately explained the April expense report and that on May 24, the Claimant was merely following an established practice. The Organization further contends that dismissal was arbitrary, capricious and excessive.

The Carrier contends that it proved the charges by substantial evidence. It further argues that the charges were serious, involving insubordination and dishonesty, and that dismissal was appropriate under the circumstances.

The Board reviewed the record carefully. With respect to the April expense account, the evidence showed that on April 22, 1996, the Claimant, whose headquarters was Ft. Lauderdale, was in Tampa, Florida, to pick up radio rack shelves for a code line project. At approximately 11:00 A.M., the Claimant was paged by his wife who advised of an emergency at their house in Seffner, Florida, near Tampa. The Claimant drove to the house, dealt with the emergency, purchased gas in Seffner shortly after 2:00 P.M. and then drove back to Ft. Lauderdale, arriving there around 7:30 P.M. after stopping in West Palm Beach for what the Claimant described as a late lunch. The Claimant submitted for expense reimbursement for the meal and for eight hours straight time for the day.

With respect to the May incident, the evidence established that the Claimant was in Tampa for a safety meeting. After the safety meeting, he saw to the repair of certain radios that he had brought from Ft. Lauderdale. Around 10:30 or 11:00 A.M., the

Claimant's Supervisor instructed him to return to Ft. Lauderdale. Around 1:30 P.M., the Claimant's Supervisor paged him, but received no response. An hour later, the Supervisor went for lunch and drove by the Claimant's Seffner residence and observed the Carrier vehicle assigned to the Claimant parked behind his house. The Claimant claimed eight hours straight time for the day.

The Claimant testified that after leaving the radio shop, he stopped for lunch. Thereafter, he felt ill and went to his Seffner house, intending to rest for a while to see if the illness would pass. It did not and the Claimant remained there. The day was the Friday before Memorial Day weekend. The Claimant testified that he returned to Ft. Lauderdale on Monday and that, combining his time on Friday with the travel time on Monday exceeded the eight hours straight time that he claimed. The Claimant conceded that he did not contact his Supervisor to advise of his illness or that he was going home instead of returning to Ft. Lauderdale.

It is clear from the record that the Claimant did not comply with his Supervisor's instructions on May 24, 1996, that on April 22 and May 24 he did not contact his Supervisor to obtain permission or to advise of his deviations from his assigned duties, and that his payroll and expense reports were false. Thus, the Carrier proved the charges by substantial evidence.

However, considering all of the surrounding facts and circumstances, the Board finds that the penalty of dismissal was excessive. The essence of the Claimant's misconduct was not intentional theft, but rather failure to advise supervision and obtain permission for his actions. Indeed, the Claimant's Supervisor testified that he took no exception to the Claimant responding to a family emergency, but took exception to the Claimant's failure to call in and to his claiming a lunch when he was not on the job at the time. Basically, the Claimant took his work schedule into his own hands without reporting to supervision. Such misconduct is quite serious and cannot be tolerated.

However, we note that there is no evidence of any prior discipline on the Claimant's record. On the contrary, the Claimant received a commendation for outstanding service to the Carrier during a hurricane and received a gift certificate and a day off with pay. Under these circumstances, the Board finds that the Claimant should be given one final chance to show that he can be a productive employee who respects all of the Carrier's Rules. Therefore, we will order that the Claimant be reinstated with seniority and benefits unimpaired, but without any compensation for time held out of

service. Such reinstatement will be on a last chance basis and if the Claimant should violate any Carrier Rule within six months following his reinstatement, regardless of the severity of the violation, the Claimant may be dismissed for the violation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 25th day of August 1999.