

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 June 27, 2011, M. C. McLain, Roadmaster MW Great Lakes Division, notified R. D. McKee (“the Claimant”) to attend a formal Investigation on July 7, 2011, at the Great Lakes Engineering Office conference room in Strongsville, Ohio, “to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1230 hours, on June 9, 2011, at or near mile post QI 110.5, on the Mt Victory Subdivision, in the vicinity of Marion, Ohio. It is alleged,” the letter continued, “that you left work without permission from Track Supervisor Michael McLain.” The letter further alleged that the Claimant paid himself for a full day of work. In connection with the incident, the letter proceeded, the Claimant was “charged with failure to properly perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules – General Regulations GR-1 and GR-15.” The hearing was subsequently rescheduled to August 1, 2011.

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, R. D. McKee, at the times here relevant, was employed by the Carrier as a Ballast Regulator on a track surfacing team. His date of hire was March 6, 1974. Roadmaster Michael McLain was Track Supervisor of the team. On Thursday morning, June 9, 2011, Mr. McLain instructed the team to tamp a track defect at QI 118.5 to QI 118.7, which he had found the day before while riding on the geometry car. The geometry car is a railroad car pulled by an engine, and it is equipped with instruments that measure surface and alignment deviations from the standard for the track being examined.

At around 8:30 a.m. Track Supervisor McLain called Mr. Moore, who was the Employee-in-Charge that day for the crew, to ask whether the crew had gotten out. They also discussed the morning's assignment, its location, and what to expect when the crew got to the site where they were to tamp. About 11:30 a.m. Mr. McLain finished his work on the geometry care and started to drive back to Marion, Ohio. On the way back he called Mr. Moore again and asked how they had done. Mr. Moore said that they had

fixed the spot at Q1118. Mr. McLain asked Mr. Moore his plans for the rest of the day. He said that he was at the office putting in payroll and heading home.

Mr. McLain then called Mr. Coppus, who was acting foreman that day, and got no answer. Next Mr. McLain called Mr. McKee, who answered the telephone. Mr. McLain testified that he jokingly said to Mr. McKee that he needed the crew to move to Bellefontaine, Ohio. Mr. McKee, according to Mr. McLain, replied, "Well, we were let go for the rest of the day, and I am home. We gotta be called back." Mr. McLain testified that they talked about leaving work and that Mr. McKee said that Bob Coppus, the foreman in charge, had told him that he was released to go home. Mr. McLain then drove to where the crew's equipment was tied up and, from there, to Q1118.5 to check out the work order he had given the crew in the morning. The defective track had been rendered ready for stabilization and to the timetable speed if necessary.

At 1700 hours, Mr. McLain testified, he drove back to the office at Marion where he found Mr. Moore putting in payroll again. He was making everybody's payroll read 6 hours paid, 4 hours absent with permission. He had previously entered 10 hours worked for everybody. According to Mr. McLain's testimony they began to discuss the events about the crew leaving early and not contacting him. Mr. Moore apologized for leaving, Mr. McLain stated. Mr. McLain asked him to leave the property and said that they would talk about the events on Monday. The day was Thursday, and the crew's workweek was Monday to Thursday.

On Monday morning, Mr. McLain testified, the team “just basically apologized for leaving early, and no one said that they couldn’t get track time with the Dispatcher or give any reasons why we packed it in and had gone home.” (Tr. 8). Mr. McLain told the crew that they would discuss the previous week’s incident at the end of the workday. At 1700 hours, Mr. McLain, according to his testimony, expressed his disappointment to the crew and said that he was unhappy with their leaving early on Thursday, especially without notifying a supervisor. Mr. McLain made them change their payroll entries from 6 hours worked, 4 hours left early with permission to 6 hours worked, 4 hours left early without permission.

Mr. McKee, Mr. McLain stated, has worked for him on and off for two years. He has Mr. McLain’s contact information. In the past, Mr. McLain testified, Mr. McKee has contacted him when he needed to take a day off. The foreman of the team, Mr. McLain stated, puts in the time for Mr. McKee. Mr. McLain acknowledged he did not know if Mr. McKee knew how to enter his own time. Mr. McKee in the past has made him aware, Mr. McLain stated, when he worked a Saturday or a Sunday and was not paid for the days because the foreman, who entered the payroll, was not aware that he worked.

Mr. McLain stated that in his job as Ballast Regulator, Mr. McKee operates a Kershaw regulating machine with a broom and a plow assembly. “A Ballast Regulator,” he explained, “ensures that the stone around the railroad track is in the cribs and on the shoulders” so that “the track does not move under load or under pressure.” Mr. McLain

expressed the opinion that “Mr. McKee does a fine job of knocking off the clips when we run stuff” and “is a valued member of the team. . . .”

The General Regulations that Mr. McKee was charged with violating provide in pertinent part as follows:

GR-1. Employees must report for duty at the designated time and place. Without permission from their immediate supervisor employees must not:

1. Absent themselves from duty, or
2. Arrange for a substitute to perform their duties.

* * *

GR-15. Time or wages must not be claimed on payroll, except for work actually performed:

1. By the person whose name appears on the roll.
2. In accordance with agreed-to rules.

Actual time that each member of a crew goes on and off duty must be shown on the payroll. This must be done, regardless of the assigned hours.

The conducting officer asked Mr. McLain if he felt that Mr. McKee violated General Regulations GR-1. He stated that he believed that Mr. McKee and the rest of the team left without permission. Asked by the conducting officer who the team’s immediate supervisor would have been that day. Mr. McLain stated, “The foreman in charge would have been Bob Coppus, and the Track Supervisor would have been Michael McLain.”

Regarding General Regulations GR-15, Mr. McLain testified that Mr. Moore generally puts in payroll for the team, that he has computer skills. Mr. McKee, Mr. McLain testified, probably did not have knowledge of what Mr. Moore had input in the payroll for him until Monday morning. The payroll records are not submitted to payroll for payment until Monday morning. On Monday morning Mr. McLain must approve all time for an employee to get paid.

The Claimant, Mr. McKee, was asked by the conducting officer who his supervisor was on the day in question. He answered that he thought that it was Bob Coppus. The conducting officer stated, "Bob Coppus was your supervisor?" Mr. McKee replied that years ago he was taught that one's immediate supervisor was the foreman. Mr. McKee testified that he did not tell his foreman that day that he wanted to leave early and did not expect to leave early that day. Asked if he expected to get paid for the whole day, he stated only if he had worked a full day.

Questioned by the conducting officer about payroll entries, Mr. McKee stated that he has not done that task by himself but that he has seen others do it; and that the payroll can be changed if there is something wrong with it. Once Mr. McLain approves the payroll, Mr. McKee testified, it cannot be changed.

Mr. McKee testified that he recalled the date in question. Mr. McLain called him about 1:00 o'clock on that date, he stated. He was at home at the time, and he told this to Mr. McLain. Mr. McLain told him, he testified, that he was at a particular location

and that he needed both of the gang's machines there. He told Mr. McLain, Mr. McKee stated, that he needed to call him out because Foreman Coppus had sent the team home. Asked by the conducting officer why Foreman Coppus sent the team home, Mr. McKee testified that the other machine operator had been sent to pick up a tool that a previous operator had borrowed, and with only one operator left, there were not enough operators for the gang to run. In addition, according to Mr. McKee, the dispatcher told them while they were on the track that morning that they had to get in the clear and that they were not going to get back out. The foreman, Mr. McKee testified, said to him, "Since Mike Devitt (the other machine operator) left, then you go home too."

Mr. McKee testified that he was told to leave by Foreman Coppus. The reasons he gave, Mr. McKee stated, were that Mr. Devitt left to get the tool and that the dispatcher said that they were not going out. He did not ask how many hours were going to be put in for him on the payroll, Mr. McKee testified.

The Organization representative asked Mr. McKee, "Randy, do you think you're guilty of either one of these charges?" Mr. McKee answered, "Well, yeah. I did leave early. But I was told to." He did not put his time in for the day, Mr. McKee testified, and he did not try to pay himself for a full day's work.

In a closing statement in behalf of the Claimant, the Organization argues that the Carrier failed to meet its burden of proof. There was no proof that Mr. McKee entered his time or tried to pay himself, the Organization asserts. With regard to the charge that

he left without permission, the Organization argues that Mr. McKee did what he was ordered to, that the foreman told the members of the team to go home. He went home, the Organization asserts, because they could not get back on the track. Mr. McKee should be found innocent of the charges, the Organization asserts, and these proceedings should not be in his personnel file.

After the close of hearing, by letter dated August 10, 2011, the Division Engineer MW Great Lakes Division notified M. McKee of the Carrier's determination that the hearing was conducted in accordance with his contractual due process rights and that all objections were properly addressed by the conducting officer during the course of the hearing. Regarding the substance of the charges, the Division Engineer stated, "The evidence in the record demonstrates a violation of Rule GR-1; therefore, it is my decision that the discipline to be assessed is a Timeout with five (5) days overhead suspension for a period of one (1) year." There was no finding that the Claimant violated Rule GR-15.

The Carrier argues that substantial, probative evidence was presented that unequivocally establishes that the Claimant violated Rule GR-1 by leaving work without permission from his supervisor. At no time, the Carrier asserts, was there any conversation between the Claimant and his supervisor about the Claimant leaving work early. Nevertheless the Claimant and the remainder of the crew went home without approval of their immediate supervisor, which, the Carrier argues, means that they went

home without permission. The Carrier contends that the Claimant's defense, that he had his foreman's permission, is without merit. The foreman, the Carrier asserts, is not the Claimant's immediate supervisor for purposes of Rule GR-1 and could not grant him permission to go home early. The discipline assessed – a timeout and a five-day overhead suspension for one year – was fully justified, the Carrier contends, and in line with the terms of the IDPAP for a first serious offense. The discipline is extremely lenient, the Carrier argues, based on the Claimant's years of service with the Carrier. The Carrier requests the Board to deny the claim.

There was no substantial evidence of a violation by Claimant McKee of Rule GR-15, and the Carrier correctly did not find him guilty of violating that rule as alleged in the charge letter. The Claimant, however, did violate General Regulations GR-1 by leaving work without the permission of Supervisor McLain. When asked by the conducting officer who his supervisor was on the day in question, he stated that he thought that it was Bob Cippus. When the conducting officer came back with, "Bob Cippus was your supervisor?" the Claimant stated that he was taught years ago that your immediate supervisor is the foreman.

Award No. 98 of Public Law Board 7120 involved the discipline of another member of the team that Claimant was part of on June 9, 2011, that left work early. The claimant in Award No. 98, when asked during his hearing about the foreman's position under the parties' agreement, stated, "The track foreman direct[s] employees assigned

under their jurisdiction and it used to be for years that was my immediate supervisor.”

Award No. 98, PLB No. 7120, at page 14.

Claimant McKee was hired by the Carrier in March, 1974. Like the claimant in Award No. 98, he is a veteran railroad worker. His testimony that he was taught years ago that your immediate supervisor is the foreman is not inconsistent with the fact, acknowledged by the claimant in Award No. 98, that the supervisory structure has changed. Although for years the foreman used to be considered one's immediate supervisor, that is no longer the case, at least for purposes of being released from work early.

The Board believes that Mr. McKee was aware that his immediate supervisor, at least with regard to getting permission to leave work early, was Track Supervisor McLain. For example, he did not deny Mr. McLain's testimony that in the past when he needed to take a day off, he contacted Mr. McLain. Moreover, why did he and the other team members apologize to Mr. McLain for leaving early without his permission if one needed only the foreman's permission to leave early? If a foreman's permission was sufficient, then Mr. McKee and the other members of his team had nothing to apologize for. The Board finds that the evidence establishes that Mr. McKee knew that he needed the permission of Track Supervisor McLain to leave work early on June 9, 2011.

When Mr. McKee was told by the foreman to leave for the day he should have asked him by what authority he (the foreman) was sending the team home. In the

alternative he should have checked directly with Mr. McLain to assure that it was permissible to leave work early. The Claimant is a veteran railroader with more than 35 years of service. If he were a new employee, one might understand a reluctance to question what was told him by someone many years his senior. Perhaps one could find an element of mitigation in such a situation. But Mr. McKee is a very senior employee who knew the ropes and when it was, and was not, permissible to leave work early.

He violated Rule GR-1 by leaving work early without permission of his immediate supervisor. Leaving work early without permission is a serious offense. In Award No. 98 of PLB No. 7120 this Board reduced the discipline of the claimant because he had received at least partial permission of Track Supervisor McLain to leave early. In the present case leaving early had not even been discussed between the Claimant and the Track Supervisor. He plainly did not have permission to leave work early.

Knowing that he personally had not been given permission to leave, the Claimant, when told by the foreman to leave, either should have asked the foreman if the Track Supervisor had authorized release of the team in mid-day or called the supervisor directly himself to ask if it was permissible to leave. Given his years of service, the Claimant was aware, or should have been aware, that the foreman can direct team members regarding work performance, but does not have the authority to release employees from work in the middle of the workday. The discipline assessed was

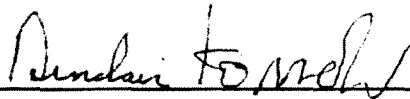
appropriate discipline under the terms of the IDPAP for a first serious offense within a three year period. The claim will be denied.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

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

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
January 5, 2012