

PUBLIC LAW BOARD NO. 6468

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS))	
VS)	NMB CASE NO. 18
)	Award NO. 18
CSX TRANSPORTATION, INC.)	
(Former Louisville & Nashville)	
Railroad Company))	

STATEMENT OF CLAIM:

Claim on behalf of L. W. Rose, ID 199947, for time lost account of attending investigation on September 15, 2000, and to expunge the letter of reprimand and any other reference to incident of August 26, 2000.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved. The parties to this dispute were given due notice of hearing thereon.

Claimant was summoned to a formal investigation on a charge that he marked off under false pretensions on August 3, 19, 22, 23 or 26, 2000. Following the investigation Carrier found claimant culpable and placed a Letter of Reprimand on his record.

This Board has had the opportunity to review the transcript of hearing, together with all other documents submitted by the parties. The record reveals there is a dispute over statements allegedly made by claimant, with Carrier witness testifying claimant told him he had laid off for birthdays and claimant denying he made such comment. The record indicates that Carrier's witness testified claimant made the statement in front of himself and another person, a Mr. McDonald. The Hearing Officer made no effort to secure the presence of Mr. McDonald in order that he might testify at the hearing, consequently, the record merely shows the contradictory statements of claimant and the Carrier witness.

Ordinarily the Board would find that it was the duty of the Hearing Officer to determine the credibility of the testimony, however, in this case, where there was a third party who allegedly heard the conversation, it was the duty of the Hearing Officer to

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attempt to resolve the issue by securing testimony from the third party. His failure to do so was detrimental to claimant's rights.

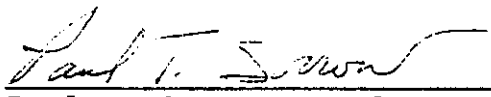
Based on the record it is the opinion of this Board that Carrier has failed in its burden to produce substantial evidence that claimant was guilty of the charge against him. The Letter of Reprimand must be removed from claimant's record.

AWARD

Claim sustained. Carrier is instructed to comply with this Award within thirty days of the date hereof.


F. T. Lynch, Neutral Chairman


Patricia A. Madden, Carrier Member


Paul T. Sorrow, Employee Member

Award date August 5, 2002