

PUBLIC LAW BOARD NO.7008

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

- and -

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

STATEMENT OF CLAIM:

Appeal of discipline assessed to BMW employee J.B. Gower, ID#****, as a result of a hearing held on December 12, 2005, in Atlanta, GA.

It is respectfully requested that the charge letter of October 26, 2005 and all matters relative thereto be removed from Mr. Gower's personal file and he can be made whole for all losses suffered.

OPINION OF BOARD:

This dispute involves Maintenance of Way employee J.B. Gower (hereinafter referred to as "Claimant") who was assessed a five (5) day overhead suspension, for a period of one (1) year, following an investigation held on December 12, 2005. Specifically, the record demonstrates that between September 30 and October 24, 2005, the Claimant was absent two (2) times, without permission from his supervisor, in addition to reporting an hour late for work on two (2) occasions.

In a letter dated October 26, 2005 the Claimant was instructed as follows:

"You are instructed to attend a formal investigation on November 9, 2005 to determine the facts and place your responsibility, if any, in connection with absenteeism. In less than thirty days, you have been absent, without permission twice, and have been late twice for your

assigned tour of duty without notifying your supervisor prior to the start of duty, with the last occurrence being on October 24, 2005. Notwithstanding the serious nature of the incident under investigation and the extent of your involvement, as an alternative, and in accordance with the 'Individual Development and Personal Accountability Policy' you may elect one of the following options and return this document....". The two (2) options provided for in the Policy: "Participation in the 'Time Out' process conducted by the Division Engineer or his designee; or, Customary handling under the Railway Labor Act and the applicable Collective Bargaining Agreement (hold an investigation). The Claimant indicated that his preference was for the second option "hold an investigation".

Following the December 12, 2005 investigation, the Claimant was informed that he had been found guilty of violating CSXT Operating Rules and General Regulations GR-1, and as a result was informed that: "You are hereby assessed five (5) days overhead suspension for this occurrence for a period of one (1) year beginning on December 30, 2005."

The Organization protested the discipline asserting that the Claimant was "set up". Specifically, the General Vice Chairman asserted that the charge letter clarified only one date and Claimant called in and was given "approval" to be off on that date. The General Vice Chairman further asserted that the Roadmaster "will not always answer his phone, thereby delaying and denying the employee an opportunity to get through to him in a timely manner". Finally, the Vice Chairman contended that "any other dates that October 24, 2005, which is the only date shown in the charge letter, are not a matter of controversy and cannot legitimately be considered in the application of discipline".

In its denial of the appeal, Carrier maintained that the Claimant's rights to a fair and impartial

investigation were not violated and there was “substantial” evidence to support Carrier’s finding that the Claimant was in violation of CSXT Operating Rules, as well as General Regulation GR-1.

The transcript of the investigation clearly shows that all of Claimant’s due process rights, provided for in Rule 25 (Discipline) of the Agreement were protected. Claimant was given proper notice of the charges, sufficient time to prepare a defense, the opportunity to produce and examine evidence, and the opportunity to present and cross-examine witnesses. In fact, the Claimant admitted at the hearing that the postponement of the original hearing, November 7, 2005, to the hearing date of December 12, 2005 was granted to allow him the opportunity to gather copies of his cellular phone records in support of his defense to the charges.

Regarding the merits of the issue, the record demonstrates that on October 24, 2005, the date of the triggering event, Claimant requested to be off for “personal business”. However, it is not disputed that Claimant did not make said request until after the normal reporting time of his assignment. Prior to that date, on October 10, 2005, Claimant called in, after his scheduled reporting time, and requested an unscheduled vacation day. On September 30 and October 3, 2005, the Claimant reported one hour late for work, sans notification to his supervisor to explain his tardiness. In that connection, the record demonstrates that from January 2005 through October 2005, the Claimant has been absent, with permission, seven (7) days, sick one (1) day, without pay, and absent, without permission, five (5) days. Therefore, the Claimant has been absent a total of thirteen (13) days in approximately ten (10) months. The record further demonstrates that Claimant Gower was “informally” coached and counseled for absenteeism on march 21, 2005, as well as may 9, 2005, and, was “formally” counseled regarding same on June 22, 2005.

Rule GR-1 states that: "Employees must report for duty at the designated time and place. Without permission from their immediate supervisor employees must not: Part 1. Absent themselves from duty...". In each of the four (4) incidents noted *supra*, Claimant failed to notify his supervisor, as required, prior to the starting time of his normal tour of duty. Given the record evidence as well as the Claimant's personal record, the imposition of a five (5) day overhead suspension for his proven violation of CSXT Operating Rules, Rule GR-1 cannot be considered arbitrary, capricious or unduly harsh. Therefore, this claim must be denied.

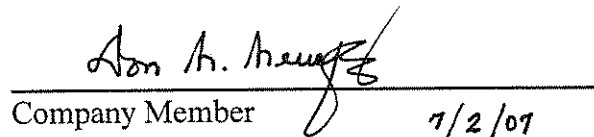
AWARD

Claim denied.


Nancy Faircloth Eischen, Chair

Dated at Spencer, New York on June 19, 2007


Union Member 6-27-07


Company Member 7/2/07