PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION OF THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

> .... [I]n connection with the objections raised during the hearing, the reasons stated in this appeal and furthermore [sic] violations of the Agreement, we hereby request Mr. Monroe, ID#******, be exonerated from these charges against him and all matter relative thereof. We request Mr. Monroe immediately be reinstated as an employee with CSXT and his name placed back on any and all seniority rosters and compensated with all lost wages and benefits due to the Carrier's actions and violations of any and all of the provisions of the June 1, 1999 CSXT/BMWE Collective Bargaining Agreement, specifically Rules 24 and 25, as so stated.

OPINION OF THE BOARD:

R. L. Monroe ("Claimant") was hired by CSXT's Engineering Department on June 21, 2004. At all times relevant to this issue, the Claimant was assigned as a Basic Trackman, headquartered at Clinton, SC.

On Sunday, September 25, 2005 at approximately 6:45 p.m., Claimant contacted his Supervisor, Roadmaster D.L. Tucker, to inform him that he would not be reporting for work on the following day because he had "hurt his back". The Claimant went on to report that he had been instructed, by a physician, to stay out of work for "at least a week". Of note, the Claimant proffered no information regarding his whereabouts when he "hurt his back".

Thereafter, on October 7, 2005 the Claimant contacted Roadmaster Tucker to "change his assessment" and to inform his supervisor that he had injured himself "on CSX property, while on-duty". The Roadmaster told the Claimant that he should begin the "appropriate injury reporting paperwork"; however, the record demonstrates that the two did not meet to complete the requisite paper work until October 17, 2005, some twenty-two (22) days after the Claimant first reported his injury.

By letter dated November 7, 2005 the Claimant was instructed to attend a November 17, 2005 formal investigation regarding his alleged back injury. Specifically, Carrier informed the Claimant that he was charged with: "*Possible falsification of an injury and late reporting of an alleged injury. Your actions in connection with this matter appear to be in violation of, but not limited to, CSX Transportation Operating Rules-General Rule A, and General Regulations GR2, CSXT Safe Way General Safety Rules-Rights and Responsibilities 1[i]*" . Following one (1) postponement at the request of the Organization, the investigation was held to completion with both the Claimant and his chosen representative present throughout the proceedings. Thereafter, by letter dated January 9, 2006 Claimant Monroe was informed that he had been found guilty as charged, and was dismissed from Carrier's service.

On January 21, 2006, BMWE Vice Chairman R.D. Griffith filed a claim appealing the discipline. Initially, the Vice Chairman maintained that he should be "*permitted to review relevant management records for the purposes of researching issues related to enforcing the collective bargaining agreement*". The Organization further maintained that Carrier failed to provide an impartial investigation because Carrier "refused" to call Manager Field Investigations G. Roland, who was the Claims Agent responsible for the Claimant's injury claim. Regarding the merits of the

issue, the Vice Chairman asserted: "*Testimony by the Claimant during the investigation revealed that if he had been provided the requisite injury report on September 25, 2005 when he first contacted his supervisor to inform him that he had hurt his back and would be unable to work, he would have filled out the report, as instructed*". Finally, the Vice Chairman argued that: "*On page 77 of the transcript, Mr. Tucker seems to be showing a videotape in an effort to show that the Claimant was not recovering at home, but engaged in some sort of strenuous activity on the roof of a house....If anything the videotape showed the Claimant complying with his Doctor's instructions, as he was not simply staying in bed. Remember, Mr. Monroe's Doctor informed him that he was to get exercise*".

In his denial, Director Wilson averred that the investigation was fair and impartial and that the Claimant was provided all relevant "due process" rights as afforded under the Agreement. With regard to the Organization's request for pre-investigation discovery, Mr. Wilson maintained: "*Carrier reiterates that Rule 24 is not applicable to the investigation procedures established under Rule 25. Rule 25 does not specify that either the testimony or materials will be provided in affidavit form or as material evidence as a court of law may require in advance of the hearing*".

With regard to the merits of the dispute, the Carrier notes that when the Claimant first reported his injury on September 25, 2005 he made no mention of his injury being on-duty in nature. However, on October 7, 2005, when Claimant contacted Roadmaster Tucker for a second time, the Claimant admitted that he "could have done something at work....", further admitting that he had "moved some joint bars" on the date of injury. The Claimant went on to report that according to his physician, moving the joint bars "probably caused the injury". Finally, Carrier pointed to the

November 11, 2005 videotape in which the Claimant was working on a roof, "*clearly illustrating that Claimant Monroe was not truthful in his accounts*".

On the threshold issue of due process and "pre-investigation discovery", the language in Rule 24[i] does not require the Carrier to provide summaries of testimony or investigative materials to the Organization prior to the hearing. Consequently, we find no evidence of a fatal due process violation on this record.

Turning to the merits of the dispute, the record reveals that on Sunday, September 25, 2005 the Claimant called Roadmaster Tucker at home and reported that he woke up the prior morning with a "back ache". The Claimant went on to explain that he had gone to his personal doctor and was diagnosed with a "muscle strain", and that he would not be able to work for approximately one (1) week, or, until the doctor released him. According to the record, the Roadmaster repeatedly asked the Claimant if he had incurred the injury at work, however each time he was questioned in that regard the Claimant insisted that he "felt fine" when he left work the preceding Friday. The record further demonstrates that the Claimant did not mention the alleged injury to any of his co-workers, nor did he make mention of any discomfort when he saw the Roadmaster prior to leaving work on Friday, September 23, 2005. In that connection, Track Foreman Sorrow testified that he worked with the Claimant throughout the day on which he alleges he was injured, September 23, 2005, and that he did not see the Claimant "move or handle" any joint bars, nor did he see the Claimant get in the back of the truck at any time. Additionally, Mr. Sorrow stated that the Claimant did not "normally" clean up the back of the truck, and "certainly would not have done so" unless he had been specifically instructed otherwise.

The Claimant was charged with possible falsification of an injury and late reporting of an injury, which violated CSXT Operating Rules, General Rule A, and General Regulations GR-2, CSXT Safe Way General Safety Rules-Rights and Responsibility 1[i]. Specifically, with regard to Claimant's reporting of the injury, General Safety Rule 1[i] stipulates that: "*oral and written report of accidents and injuries are made as soon as possible to the supervisor or employee in charge...*". In these circumstances, Claimant's alleged injury occurred on September 23, 2005; however, Monroe did not properly report the alleged injury until October 18, 2005 as indicated on the reports the Claimant completed.

In that connection, the Claimant informed Carrier that he was unable to report for work due to the alleged "muscle strain" and the medication he was taking related to same. However, on November 11, 2005, the Claimant was videotaped during his absence from work, on a roof, upon which he was "moving tin, bending and squatting". When questioned regarding the activity, the Claimant contended that he was not actually "working", but rather "supervising" the project. The record evidence, including the videotape, does not support the Claimant's self-serving explanation(s) regarding his vigorous activities on November 11, 2005.

We have carefully considered each of the arguments of the Organization but we must conclude that there is no fatal due process violation shown on this record, and that the Carrier met its burden of proving the charges against the Claimant. In these circumstances, given the Claimant's short tenure with the Carrier and in light of his proven offenses the discipline of dismissal cannot be considered unduly harsh or otherwise inappropriate. Therefore, this claim must be denied.

AWARD

Claim denied.

Nancy Faircloth Eischen, Chair

Union Member 3-20-08

Company Member 3/20/2008