

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION AFFILIATED
WITH THE TEAMSTERS RAIL CONFERENCE

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3, of the June 1, 1999 Agreement the following will serve as our appeal of discipline assessed to K.A. Haggard ID#*****, as a result of the hearing held on July 6, 2006 at 11492 Bluegrass Parkway, Louisville, KY 40299.

For the reasons stated, as well as our numerous objections at the hearing, it is respectfully [requested] (sic) that the charge letter and all matters relative thereto be removed from Mr. Haggard's personal file, he be return [sic] to the employment of CSX Transportation, Inc., and he be made whole for all losses suffered as a result of Carrier's action.

OPINION OF THE BOARD:

Welder Helper K.A. Haggard (hereinafter referred to as "Claimant" or "Haggard") was hired by the Carrier on June 2, 2003. As background information pertinent to this dispute, on April 6, 2006, while assigned to Welder Helper position 5GQ3-078 on the Great Lakes Service Lane, the Claimant suffered an on-duty injury and was placed on long-term leave injury to receive "appropriate medical attention and recover from the work related injury". Also of note, the Claimant provided a cellular telephone number only, should it be necessary for the Carrier to contact him during his

convalescence.

On May 30, 2006, approximately seven (7) weeks after the Claimant began his long-term injury leave, Roadmaster Little contacted the Claimant, via his cellphone, regarding same. When the Roadmaster asked the Claimant if he could call him on his home phone "for better reception", the Claimant replied in the affirmative, but told the Roadmaster that he was "in the garage with his son" and requested that the Roadmaster wait thirty (30) minutes before replacing the call to his residential telephone. It is not disputed that during that phone call, the Claimant alleged that he was "continuing to wear his knee brace" as he was "still uncomfortable" walking without it. The Claimant went on to inform the Roadmaster that his physical therapist told him that he should only take the knee brace off when he was "at home" and could "walk on level ground". Prior to ending the phone call the Claimant told the Roadmaster that since he was "outside and not on level ground" he was wearing the knee brace, as prescribed.

However, unbeknownst to the Claimant, the Carrier hired a Private Investigator, Mr. G. Phillips, of Gene Phillips, Inc., to determine if Claimant Haggard was being "completely honest" regarding the on-duty injury. The record evidence, including a videotape (Carrier Ex. "O") indicates that at the time of the telephone conversation between the Claimant and the Roadmaster, the Claimant was not at home, but rather at a local park fishing with his young son. As detailed in the videotape it was apparent that the Claimant was not only fishing, but doing so without wearing his knee brace, and was ascending and descending an uneven embankment while fishing.

Given the "severe dishonesty" exhibited by the Claimant, by letter dated June 22, 2006, Haggard was instructed to attend a July 6, 2006 investigation. Specifically, the Claimant was charged with: "...making false statements concerning matters under investigation and dishonesty in

possible violation of CSX Operating Rule GR-2". The hearing was convened and completed as scheduled and, by letter dated July 26, 2006, the Claimant was informed that he had been found guilty as charged and dismissed from Carrier service.

The Organization's Vice Chairman, A. Shelton appealed Carrier's decision on August 7, 2006, maintaining that: *"Mr. Haggard is a diligent and hard working employee, and we feel that the discipline of dismissal is very harsh. We also feel that Mr. Haggard has been treated unfairly"*.

In his denial to the Organization's appeal, Director Labor Relations J. Wilson argued that there was "sufficient evidence" adduced at the investigation to show that the Claimant was guilty as charged. Mr. Wilson further went on to note that: *"During the testimony of Mr. Little, it was stated that he called the Claimant from his office on May 30, 2006 while the Claimant was off duty as a result of an alleged on-the-job injury...specifically, during the phone conversation Claimant was asked if he was wearing his knee brace at the time and he answered in the affirmative....Claimant also stated during the conversation that he was home, but he was outside...."*

The Organization rejected the Carrier's appellate declination in a letter dated December 13, 2006 maintaining: *"When the Organization questioned Mr. Little, it was never proven that he made a call to Mr. Haggard from his office. Mr. Haggard's phone records clearly show that the phone call on May 30, 2006 from Little to Haggard came from a source other than Mr. Little's office"*.

Despite the Parties continued attempts to resolve the issue, they were unable to do so. Therefore, the dispute was placed before the Board for final adjudication.

At the outset, the Organization asserted certain procedural "irregularities" as well as evidentiary "deficiencies" in the record, however, there is insufficient evidence before us to support those assertions. Turning to the merits of the dispute, the Claimant was injured, on-duty, on April

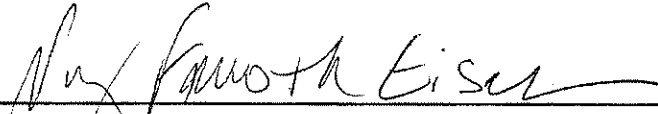
6, 2006. Thereafter, the Claimant was placed on long-term injury leave so that he could receive appropriate medical attention and recover from the injury. During his convalescence, the Claimant was instructed, in no uncertain terms, that he was to wear his knee brace, any time that he went out of the house, or when walking on an uneven surface(s). Despite those very clear directive(s), some seven (7) weeks later, the Claimant was videotaped, sans knee brace, enjoying a day of fishing with his young son. In fact, the videotape shows the Claimant ascending and descending an uneven embankment while doing so, without regard for his alleged injury.

In addition to engaging in "forbidden" activities, the Claimant was dishonest during his phone conversation with Roadmaster Little. To wit, when the Roadmaster asked the Claimant if he could return the call on his home phone for "better reception", the Claimant lied, telling his supervisor that he was "in the garage" and would not be able to answer the phone for "at least thirty (30) minutes". It is not disputed that during that conversation, the Claimant assured Mr. Little that he was wearing his knee brace, as directed, because he was "out of the house" and the ground was "uneven". The record evidence demonstrates that at the time the Claimant made those statements he was not in the garage, but rather fishing with his son.


The Carrier charged Claimant Haggard with "possible violation of CSX Operating Rule GR-2" which states, in pertinent part: "...making false statements concerning matters under investigation and dishonesty in possible violation of CSX Operating Rule GR-2...". In these circumstances, the Carrier produced substantial evidence of the Claimant's guilt. Therefore, the discipline of dismissal cannot be considered unduly harsh or otherwise unjustified.

AWARD

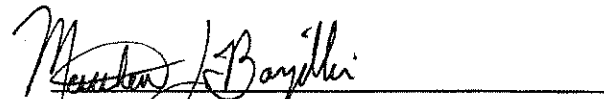
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 3-20-08



Company Member 3/20/2008