

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 25, Section 3, of the June 1, 1999 Agreement the following will serve as our appeal of discipline assessed to BMWED employee C.S. Cloud ID#*****, as a result of the hearing held on March 14, 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. Cloud's personal file, and he be made whole for all losses suffered as a result of Carrier's action.

OPINION OF THE BOARD:

C. S. Cloud, ("Claimant") was hired by CSXT on July 2, 2004. At all times relative to this issue, the Claimant was assigned to Machine Operator "A" position 6P07-067, on the Midwest Service Lane. On February 22, 2006, Claimant Cloud was absent, with permission, due to a pre-planned physician's appointment in Hopkinsville, KY. At that time, the Claimant was working out of Nashville, TN, approximately 100 miles from his home residence, a fact pertinent to this dispute.

On February 28, 2006, the Claimant entered his payroll for the preceding week. According to the Claimant, he "thought" he was entitled to compensation for the date he was absent, February 22, 2006. Specifically, the Claimant entered the amount of hours worked by the relief employee on

his position, "believing" he was entitled to the pay. Thereafter, when Roadmaster Smith began approving payroll, he realized that the Claimant entered the full ten (10) hour pay for February 22, as well as claiming full travel expenses (FTV) pay, which amounted to fifty dollars (\$50). As a result of the Claimant's "fraudulent" time claim, Mr. Cloud was instructed to attend a March 14, 2006 investigation on the following charges:

The purpose of this investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred on February 28, 2006. When I attempted to approve payrolls for the prior week, you had claimed time for working on Wednesday, February 22, 2006 when I knew that you had asked for and been given permission to be off on that day for a doctor's appointment. You did not work on February 22, 2006 as your payroll indicates. In connection with the above, you are charged with dishonesty and false claim of wages, in possible violation of CSX Operating Rules GR-2 and GR-15.

The investigation was held to completion as scheduled. In a letter dated April 3, 2006, the Claimant was informed that he had been found guilty as charged, and assessed a 30 day actual suspension. The Organization's Vice Chairman, A. Shelton, appealed the discipline to Director Labor Relations, J. Wilson, in a letter dated April 12, 2006. At the outset, the Vice Chairman requested a list of Carrier witnesses, so that the Organization could "develop a fair investigation". Regarding the merits of the dispute, the Vice Chairman argued that: *"Mr. Cloud is a diligent and hard working employee, and we feel the discipline of thirty (30) days is very harsh. We also feel that Mr. Cloud is being treated very unfairly"*.

In a declination letter dated August 9, 2006, Director Wilson confirmed the Parties' July 11, 2006 conference, noting at the outset that all of Claimant's "due process" rights, as provided under Rule 25 (Discipline) of the Agreement, were "fully protected". With respect to the merits of the issue, Director Wilson maintained that the Carrier had sustained its burden of producing "substantial" evidence of the Claimant's guilt. Mr. Wilson went on to note that: *"Mr. Cloud testified*

that the Assistant Roadmaster told him that he got paid for the day he was off, but when Roadmaster Smith confronted him about it, he then changed his story and said he thought he was kidding when he said 'no, you don't get paid...'. However, the record brought out that the Claimant admits he knows how to input payroll, and that he should not get paid for the day he was off, but as he put it, 'I did not think that, you know, the payroll would be a big deal'...". Finally, with regard to the quantum of discipline, Carrier maintained that "in light of the Claimant's past discipline record" the discipline assessed was "fully justified".

At the outset the Organization alleged certain procedural objections, maintaining that Carrier failed to provide information necessary to the Claimant's defense. However, the record evidence supports Carrier's contention that the Claimant was given proper notice of the charges; Claimant and his representative were both present throughout the proceedings; and, given appropriate opportunity to present and cross-examine witnesses. Therefore, in that regard we find no violation of the Agreement.

Turning to the merits of the issue, the Carrier asserts that the Claimant knowingly entered false payroll information for work which he did not perform on February 22, 2006. In doing so, the Carrier maintains that the Claimant violated CSXT Operating Rules GR-2 and GR-15 which respectively state, in pertinent part:

GR-2- All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:

4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent.
7. Make any false statements.....

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 assigned hours.

Although he asserted that he was innocent of wrongdoing, during his testimony at the investigation Claimant Cloud admitted that he knew he would not be paid for work on February 22, 2006, stating that:

- Q. Mr. Cloud, when you asked Mr. Warburton whether you would get paid for the day that you went to take your test, and you were told 'no', did you make any attempt to remove that time from your payroll?
- A. No.
- Q. Can you explain why you ignored the comments from Mr. Warburton that you were not to be paid for this time?
- A. Mr. Warburton walked by and was on the phone. Somebody said that 'that's the man you need to ask'. I asked him if I was taking a CDL test, and needed a physical, would I get paid for it? He looked at me and said 'no, why would you?'. At that point, I figured Damon Smith will approve it, or Damon Smith won't approve it.

In that connection, during the investigation, the Claimant maintained that he had "no idea" how to input his time properly. Specifically, Cloud contended that he did not actually input his time, but rather left the task to co-worker "Mr. Phillips". According to the Claimant, he had asked Mr. Phillips to testify on his behalf regarding the improper input, however, Mr. Phillips was "not available". The Claimant further asserted that: "I never put in any time, I never put in any holiday pay, I never put in the FTV, and I never put in any codes. For one, I don't know how".

At best, the Claimant's account/explanation regarding the fraudulent time claim was both evasive and inadequate. In fact, the majority of the Claimant's testimony was not credible. On the one hand Cloud admitted that the "man to ask", Mr. Warburton told him, without equivocation, that he would not be paid for the date of February 22, 2006. However, according to the Claimant, he thought Warburton might be incorrect because he was "on the phone, discussing business".

Therefore, the Claimant says he relied on the fact that Damon Smith would "pay the hours claimed, or he won't pay." Failing that "logic", the Claimant asserted that he had "no idea" how to input time and that he had instead relied upon fellow employee Phillips, who "obviously" input the Claimant's time incorrectly.

Given the unrefuted record evidence, in addition to the Claimant's own damning testimony, this claim must be denied. Finally, in the circumstances, a thirty day actual suspension was fully justified, and therefore, cannot be considered unduly harsh, arbitrary or capricious.

AWARD

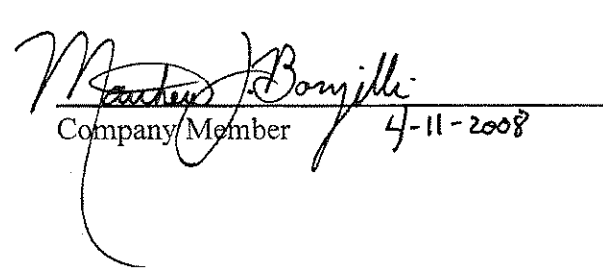
Claim denied.



Nancy Fairecloth Eischen, Chair



Union Member



Company Member

4-11-2008