

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	CASE NO. 17
vs.)	AWARD NO. 17
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim of the System Brotherhood that:

1. The fifteen (15) day overhead suspension for a period of one (1) year imposed upon Mr. B.N. Steward for alleged violation of CSX Operating Rule A and General Regulations 1 and GR-2(4) in connection with charges of failure to protect his assignment and insubordination on September 26 and 27, 2006, was unjust, arbitrary, capricious and in violation of the Agreement [System File APPEAL-BNSTEWARD/12(06-1413) CSX].
2. As a consequence of the violation referred to in part (1) above, Claimant B.N. Steward's record shall now " . . . be cleared of the charges and results of those charges, and that he be compensated for any lose (sic) of wages or benefits deriving from the referred to charges. ****"

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, B.N. Steward, has been employed by the Carrier since 2000. On October 6, 2006, he was charged to attend an investigation, as follows:

The purpose of this investigation is to determine the facts and place your responsibility, if any, in connection with the incidents that occurred on September 26 and 27, 2006 at Homestead, FL. Your failure to report for duty and notify your employer of your absence on the 26th and while being questioned about this failure to protect your assignment; it is alleged that you were insubordinate on the 17th.

Following the investigation, the Carrier found that Claimant had failed to protect his assignment by not knowing his team members' locations and failing to notify his supervisor of their absence. The discipline letter also stated that Corporate Lodging receipts did not support Claimant's contention he was using a motel at Belvedere, Florida as a headquarters point and that he had reported to that facility. The Carrier therefore concluded that Claimant was guilty of failure to protect his assignment and assessed him a 15-day overhead suspension for a period of one year.

Emil Marrero, Carrier Engineer of Track, testified that Claimant was working for him as Extra Team Foreman at the time of the relevant events. Mr. Marrero stated that he had sent the extra team from Homestead to West Palm Beach to install a turnout, but when the team arrived on Monday, September 25, 2006, the material had not arrived as scheduled. Therefore, he instructed Roadmaster William Hinnant to have the team return to Homestead the next day. Tuesday, September 26, 2006 was designated as a move day, and Claimant and his team moved their vehicles and equipment. They appeared for work in Homestead as scheduled on Wednesday, September 27.

Mr. Marrero stated that he never spoke to Claimant concerning these events, but made the decision to charge him based upon information provided by Mr. Hinnant. The charges apparently arose because at approximately 1 p.m. on Tuesday, Mr. Marrero called Mr. Hinnant and inquired as to the team's whereabouts, and Mr. Hinnant was unable to reach Claimant on the telephone until 4 p.m., by which time Claimant was off duty. Mr. Hinnant had no knowledge of the movements of any team members that day, and could not state whether they were traveling, in the motel, or in any unauthorized location. From his 4 p.m. telephone conversation with Claimant, he concluded that Claimant had been absent from work and had not notified management.

The Carrier first asserts that all of the Claimant's procedural rights were fully protected and the hearing was conducted in a fair and impartial manner. On the merits, the Carrier asserts that it demonstrated, with substantial evidence, that Claimant is guilty of violating Carrier Operating Rules General Regulation A, General Regulation 1, as well as GR-2 part 4, when he failed to report to work and was later insubordinate to his supervisor when reporting his activities. The Carrier states that the discipline assessed was lenient, especially in light of Claimant's prior absenteeism record. The Carrier urges the Board to deny the claim in its entirety.

The Organization asserts that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. First, the Organization notes, Mr. Marrero, who pressed the charges, had no first-hand knowledge of the incident. As for Mr. Hinnant, the Organization argues that his testimony does not support the conclusion that Claimant failed to protect his assignment. The Organization notes that the team made the 100-mile move on September 26, and were ready to begin work on September 27. Although Mr. Hinnant contended that he was unable to reach Claimant by telephone from 1 to 4 p.m., this does not demonstrate failure to protect his assignment, the Organization states, especially since the move was accomplished on September 26 as the supervisors had instructed. The Carrier apparently concluded, the Organization notes, that because


Claimant did not contact Mr. Hinnant while he was directing and coordinating the move he failed to protect his assignment. The Organization asserts that Claimant was not absent, and he was not required to contact a supervisor to provide information about the status of the move. The Organization also points out that the Carrier presented no evidence concerning the asserted Corporate Lodging violation.

We have carefully reviewed the record in its entirety, and find that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. The Carrier found Claimant guilty of failing to protect his assignment. The evidence relied upon by the Carrier to support this conclusion is the fact that Mr. Hinnant was unable to reach Claimant on the telephone for a three-hour period during which he was traveling and moving his crew from one location to another. The record shows that the move was accomplished on schedule and the crew appeared for work at the new location the next day. The vague testimony concerning Mr. Hinnant's telephone conversation with Claimant does not establish the violation, and there is nothing else to demonstrate that Claimant and his crew members were not where they should have been, performing their assigned moving duties for the day. In addition, while the Carrier found Claimant guilty of a Corporate Lodging violation, nothing was presented at the investigation to support that charge. Thus, the record does not support Claimant's guilt of the charges, and the claim will be sustained.

AWARD

Claim sustained. The Carrier is directed to comply with this Award within 30 days.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member 3/26/09


TIMOTHY KREKE 3-26-09
Organization Member

Dated this 26th day of March, 2009.