

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF	)	
MAINTENANCE OF WAY EMPLOYEES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	CASE NO. 23
vs.	)	AWARD NO. 23
	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM:

Claim of the System Brotherhood that:

1. The thirty-five (35) day suspension imposed upon S.M. Hunt in connection with his alleged failure to report to work on Thursday, May 24, 2007 and failure to notify his supervisor as previously instructed in possible violation of CSX Operating Rules—General Rule A, General Regulations GR-2, items 4,5, 7 and 8 is unjust, unwarranted and in violation of the Agreement [Carrier's File 12(07-0951] CSX].
2. As a consequence of the violation outlined in Part (1) above, on behalf of Mr. Hunt we request that all discipline imposed be removed and that he be made whole for all losses sustained.

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, S.M. Hunt, had been employed by the Carrier as a Track Foreman for approximately two years at the time of the relevant events. On June 7, 2007, the Carrier charged him with several rules violations in connection with his unauthorized absence on May 24, 2007, and with dishonesty in connection with the reasons he advanced for not reporting to work. Following the investigation, the Carrier found Claimant guilty of the charges and assessed him a 35-day suspension. Claimant's previous absenteeism handling consisted of a coaching/counseling on March 20, 2007.

G.A. Caswell, Roadmaster at the Carrier's Selkirk, New York facility, testified at the investigation that he was Claimant's supervisor and had instructed him to personally notify Mr. Caswell if he was not going to report for work. He testified that on May 24,

2007 Claimant did not report for work, nor did he call in. Mr. Caswell stated that he did not hear from Claimant at all that day. Mr. Caswell further testified that when Claimant returned the next day he told Mr. Caswell that he had experienced back problems and had seen his doctor at the Veterans Administration Hospital. Mr. Caswell requested that Claimant produce a doctor's note, and he also checked with the hospital, which had no record that Claimant had been at the facility on May 24. The note Claimant later produced stated that he had been seen on May 25.

Claimant acknowledged at the investigation that he had been instructed to notify his supervisor if he was going to be absent, and that he was absent on May 24, 2007 and did not call as instructed. Claimant stated that he experienced back pain, for which he was treated at a Veterans Administration Hospital. Although he maintained that he sought treatment on May 24, he acknowledged that his doctor's note stated that he had been seen on May 25.

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. In particular, the Organization asserts, the transcript demonstrates that the Organization was not hampered in its defense. On the merits, the Carrier asserts that it demonstrated, with substantial evidence, that Claimant is guilty of the charges. Indeed, the Carrier notes, Claimant admitted that he failed to call his supervisor regarding his absence, and was not at work on the date in question and that admission is sufficient to satisfy the Carrier's burden of proof. Given Claimant's record, the Carrier concludes, the 35-day suspension assessed herein was lenient and should not be disturbed by this Board.

The Organization does not dispute that Claimant was absent without permission on May 24, 2007. However, the Organization asserts, the transcript of the investigation demonstrates that the Hearing Officer had predetermined Claimant's guilt of the charges and refused to allow the Organization to develop Claimant's defense, thereby depriving him of his right to a fair and impartial investigation. In light of this procedural violation, the Organization urges that the claim be sustained on that basis. Should this Board consider the merits, however, the Organization asserts that the 35-day suspension was harsh and excessive in light of Claimant's record, and should be overturned.

The Board has carefully reviewed the record in its entirety, and finds that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. Claimant admitted that he was absent without authority and did not call in as instructed. That admission is sufficient to satisfy the Carrier's burden of proof on this issue. As for the charge of dishonesty, while Claimant contended that he visited his doctor on the day he was absent, the credible evidence demonstrates that he did not do so until the next day, after Mr. Caswell instructed him to produce a doctor's note. Thus, this charge has also clearly been proven by substantial evidence.

With respect to the penalty assessed, however, we find it excessive given the particular circumstances of this case. Given Claimant's prior record, we find a 15-day

suspension more in line with progressive discipline, and reduce the suspension accordingly.

AWARD

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


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI 3/23/09
Carrier Member


TIMOTHY KREKE 3-23-09
Organization Member

Dated this day of , 2008.