

**PUBLIC LAW BOARD NO. 7104**

**AWARD NO. 44**

**CASE NO. 44**

**PARTIES TO  
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

**ARBITRATOR:** Gerald E. Wallin

**DECISION:** Claim denied.

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

1. The dismissal imposed upon Mr. T. Pollack for his alleged conduct unbecoming an employee of CSX Transportation, dishonesty and fraud, for actions that appear to be in violation of, but not limited to, CSX Transportation Operating Rules - General Rule A, General Regulations GR-2 items 4, 7 and 8, GR-3 as well as the CSX Code of Ethics, IT Security Policy and E-mail Policy is harsh, excessive, arbitrary and capricious and in violation of the Agreement (System File D70501909/2009-037955).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Pollack shall be immediately reinstated with all seniority and benefits intact and that he be compensated for any and all straight time and overtime hours he could have performed service for the Carrier beginning January 27, 2009 and continuing until such time as the Claimant is fully reinstated."

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The facts of this unusual dispute are convoluted. In the interests of brevity, suffice to say that claimant was terminated from a non-Agreement Road Master position for conduct unbecoming an employee of the Carrier. This action followed a period of disability leave between June and October of 2007. During this period, a dispute arose over the propriety of the efforts of certain Carrier officials to obtain updated medical information for the purpose of determining when claimant would be returning to work. Claimant did return to work for a brief period in mid-October. Claimant last

worked for the Carrier in mid-December of 2007. The Carrier's email system was used for communications between claimant and the Carrier officials. According to the Carrier's evidence, some of those emails had been altered by claimant to include false wording. Claimant was terminated from his non-Agreement position as a result.

Because he had retained his seniority under the Agreement, an investigation was convened pursuant to the discipline provisions of the Agreement. Notice was sent to claimant by letter dated March 4, 2008. Thereafter, the investigation was postponed at the request of the Organization some six times. The Carrier granted no further postponements and the investigation was held on January 13, 2009. Claimant did not appear. The investigation was held nonetheless.

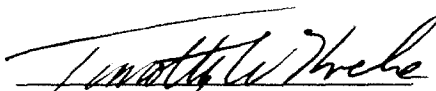
Our review of the record did not disclose any procedural irregularities of significance. On the merits, we find the record did contain substantial evidence to establish that several of the emails exchanged between claimant and his supervisors were altered by claimant to include false wording or other information. Accordingly, the record supports the Carrier's determination that claimant violated the rules for which he was charged.

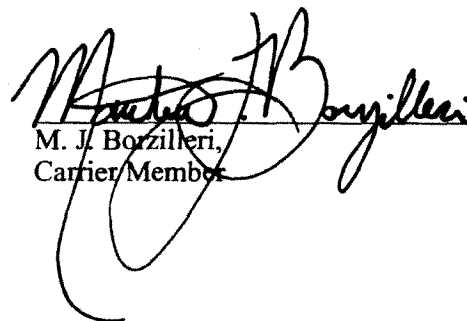
Given the nature of the misconduct involved, we do not find the Carrier's disciplinary decision to have been harsh or otherwise unreasonable. The claim, therefore, must be denied.

**AWARD:**

The Claim is denied.

  
Gerald E. Wallin, Esq., Chairman

  
T. W. Kreke,  
Organization Member

  
M. J. Borzilleri,  
Carrier Member

Date: 10/5/2010