

PUBLIC LAW BOARD NO. 7120

(BROTHERHOOD OF MAINTENANCE OF WAY
PARTIES TO DISPUTE: (EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated February 29, 2008, R. E. Wolfe, Engineer Track, Atlanta Division, instructed V. L. Alexander ("the Claimant") to attend a formal Investigation on March 20, 2008, at the CSX Engineering Offices in Atlanta, Georgia, "to determine the facts and place your responsibility, if any in connection with absenteeism." The letter stated that the Claimant had been absent from his work assignment for 15 days out of the past 60 days and that on only one of those days had he requested and been granted permission to be absent. According to the letter on January 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, and February 1, 22, 25, and 26, 2008, the Claimant was absent without the permission of his immediate supervisor, T. K. Collier, and failed to report for duty at his assigned time and place. The letter declared that the Claimant was "charged with conduct unbecoming a CSX Transportation employee, insubordination, failure to protect your assignment, and absent without proper authorization." His actions, the letter continued, "appear to be in violation of, but not limited to, CSX Transportation Operating Rules - General Regulations GR-1 and GR-2, as well as Rule 26 (a) of the 1999 Agreement between CSXT and the BMW." After three postponements—the first two at the Organization's

request and the third, apparently, by mutual agreement– the hearing was held at the CSX Engineering Office in Tarrant, Alabama, on April 29, 2008.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

According to the evidence the Claimant called his supervisor, Roadmaster Tim Collier, and said that he had to be absent for one day, January 17, 2008. The Claimant, however, did not call in or report for work a number of additional days. Roadmaster Collier called the Claimant at the number listed for him at work but was unable to reach him. On the third day the Claimant called the Roadmaster back and said that he had some issues going on and would be back to work. The Claimant came back to work at the beginning of February, 2008, but then was absent again on February 22, 25, and 26, 2008. The Roadmaster testified that after the Claimant came back to work in the beginning of February he spoke to him about his attendance.

The Claimant testified that on January 17, 2008, he called the Roadmaster and informed him that he was having trouble with his teeth and with getting insurance coverage for the treatment, and needed to be off work. The Claimant acknowledged that he asked to be off for one day only and did not call the Roadmaster for any of the dates that he was off work from January 21 through February 1, 2008. Regarding the dates of February 22, 25, and 26, 2008, the Claimant testified that he did not remember if he called for February 22, 2008, but did not call for the 25th or the 26th. He was aware of the phone number to call and the proper procedure to obtain permission to be off, the Claimant acknowledged.

The hearing officer asked the Claimant, “. . . [O]ne of your charges is insubordination and is it true that Mr. Collier [the Roadmaster] and Mr. Wolfe [the Engineer Track] have had previous conversations with you with regard to your absentee issues?” He answered, “I had a brief exchange with Mr. Collier once after all these in a row and I talked to Mr. Wolfe maybe a couple years ago about the situation.”

In a closing statement the Claimant said that he would not have been off so many days had his insurance been in effect so that he could get his teeth fixed. On the days that he was off, he explained, he was calling the Carrier’s Medical Department in Jacksonville and the payroll department for them to inform the Aetna Insurance Company that he was an employee of CSX. According to the Claimant, Aetna was denying him coverage because CSX kept telling Aetna that he was not employed. “My mouth was sore,” the

Claimant stated, “and I couldn’t go to the dentist because CSX would not acknowledge me as being an employee.”

In testimony during the hearing, the Claimant stated that he had recently been off work for more than a year for sickness. It is not clear from the record whether his long absence affected his insurance coverage. The Claimant testified that in the absence of insurance coverage he was self-treating his dental condition and that, as a result, he damaged his teeth and will need an upper dental plate.

Following the close of the hearing, by letter dated May 17, 2008, Michael A. Bossone, Division Engineer, Atlanta Division, notified the Claimant that he “reviewed the testimony and evidence submitted during this investigation, and find that it supports and confirms that you are guilty of a violation of CSX Transportation Operating Rules – General Regulations GR-1 and GR-2, as well as Rule 26 (a) of the 1999 Agreement between CSXT and the BMW E.” The Claimant was assessed an overhead suspension for a period of one year to commence on May 26, 2008, and end on May 26, 2009.

At the hearing the Organization raised a procedural issue that the original scheduled hearing date of March 20, 2008, was more than 30 days from a number of the dates of absence listed in the charge letter. This, the Organization contended, violated a side letter between the parties stating that the “hearing shall be scheduled to begin within 30 days from the date management had knowledge of the employee’s involvement as such. . . .” The Organization objected to the hearing and requested that it be closed.

The hearing officer overruled the objection. He noted that the charge letter was dated February 29, 2008, which was only three days from the last date of absence listed in the charge letter. He also stated, "It is CSX practice in cases of absenteeism not to charge employees based on just one or two or a few days but when we see a pattern forming at that point in time we feel it's necessary to take the action of holding an investigation and obviously it wasn't until late January and then on into February that . . . we saw this was a continuing problem that we felt needed to be addressed with a formal investigation."

In Award No. 34 dated May 4, 2009, this Board held that the act of scheduling the hearing must occur within the 30-day time period, not the commencement of the hearing. The act of scheduling normally means the mailing of the charge letter to the Claimant. In the present case the charge letter was dated and mailed on February 29, 2008. That was well within 30 days of all dates listed in the charge letter beginning January 30, 2008, namely six dates.

The Board believes that so long as some of the days of absence fall within the 30-day limitations period for charging an employee with a violation, it is permissible for the Carrier to include additional days that are part of the same uninterrupted period of absence. In the present case the dates January 18 through January 29 were part of the same period of absence that included January 30 and 31, 2008. It was permissible for the Carrier to include those days as part of a pattern of excessive absenteeism that was

manifesting itself within 30 days of the mailing of the charge letter.¹

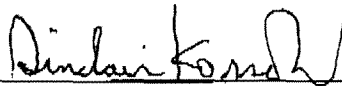
The Board finds that the Claimant clearly violated his attendance obligations. No matter what his reason for being absent, he was required by the Agreement and company rules to notify his supervisor as soon as possible. The Claimant provided no reasonable explanation for his failure to report his absences in a timely manner. The discipline assessed was appropriate for the violation committed. The claim will be denied.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
July 5, 2009

¹It is not necessary for purposes of this proceeding to rule on whether the Carrier may also rely on absences that are not contiguous with any absence occurring within 30 days of the date of the charge letter.