

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 22, 2008, M. Hinnant, Director of Rail Operations, instructed C. W. Bowers ("the Claimant") to attend a formal Investigation on March 11, 2008, in the Carrier's Division Office Conference Room in Baltimore, Maryland, "to determine the facts and place your responsibility, if any, in connection with information that I obtained on Tuesday, February 12, 2008, concerning the receipt of an expense reimbursement form that I reviewed where you had claimed reimbursement for mileage for the use of your personal vehicle to attend a meeting in Jacksonville, Florida, the week of January 7, 2008, when records show that you drove company vehicle (CSXT 96161) to the meeting and then home for the weekend." The letter stated that the Claimant was "charged with conduct unbecoming a CSX employee, falsifying an expense reimbursement form, fraud and possible violations of, but not limited to, CSXT Operating Rules General Rule A; General Regulation GR-2, as well as CSX Code of Ethics."

By letter dated June 27, 2008, from Director Hinnant, the Claimant was notified that the Carrier had rescheduled the Claimant's hearing to July 21, 2008. No reason was given in the letter for the postponement. However the letter to the Claimant stated that

the Carrier had been informed by his Union official “that you were willingly resigning from the carrier, but at this time the carrier still has not received the waiver/resignation letter from you, signed. I have attached the letter that was sent out on March 18, 2008,” the letter continued, “if you would like to take this course of action.” The hearing went ahead as rescheduled on July 21, 2008. Claimant Bowers chose to represent himself at the hearing and not to be represented by anyone from the Organization.

**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.

The Claimant began his employment with the Carrier on August 9, 1977, and at the times relevant hereto was assigned to System Production Gang Assistant Foreman Timekeeper position 5XC5-90H. On February 12, 2008, while reviewing a detail sheet showing charges against his OE budget, Director of Rail Operations Hinnant saw a charge for January 8, 2008, in the amount of \$571.16 for “mileage-personal car” for

Claimant Bowers. The charge represented an automobile trip from LaGrange, Georgia, where the team was doing winter work, to a company meeting in Jacksonville, Florida.

Director Hinnant recalled seeing the company truck used by Timekeeper Bowers at the Jacksonville meeting. He retrieved the gas receipts charged off to that vehicle and saw that gas purchases had been charged to that vehicle for the trip to Jacksonville. Mr. Hinnant questioned Claimant Bowers, who acknowledged that he had driven the company truck home to Pennsylvania and from there to the meeting in Jacksonville. The Claimant's conduct, Director Hinnant testified, violated General Rule A, which requires employees to know and obey the rules that apply to their duties and, when in doubt about the application of the rules, to ask one's supervisor. It also violated General Regulation GR-2, according to Director Hinnant, which, among other things, states that employees must not be dishonest.

William D. Lupis, Jr., Manager of SPT Curve Patch C5, under whom Claimant Bowers worked as Timekeeper, testified that until Mr. Hinnant called it to his attention he was unaware that Mr. Bowers was turning in an expense account for mileage for use of his personal vehicle while driving a company vehicle. He approved the expense account for Mr. Bowers, he stated. At no time, according to Mr. Lupis, did Claimant Bowers tell him that he had driven his company vehicle when he turned in the expense account. Mr. Bowers did not tell Mr. Lupis that he had made a mistake. He did not authorize Claimant Bowers to drive his vehicle home, Manager Lupis testified, and was not aware that he

was driving it home.

In response to questions from Claimant Bowers, Manager Lupis testified that he became aware that Bowers had his company-assigned vehicle in Jacksonville when he was asked to look at the vehicle to see if there was a radar detector on the vehicle.

Manager Lupis stated that by asking questions he was able to determine that the vehicle was the one assigned to Mr. Bowers. Claimant Bowers asked Manager Lupis why he signed the Claimant's expense account for January knowing that he (the Claimant) had his company vehicle there. Manager Lupis answered, "Knowing that you had it down there, it didn't ring a bell."

Claimant Bowers asked Manager Lupis if he remembered Mr. Bowers using his personal vehicle in December, 2007 (presumably for company business). Manager Lupis answered, "I do remember you using your personal vehicle." Mr. Bowers then made the following statement on the record, "And in using that vehicle, I'm not sure if I told you why I . . . used it, but the reason why I was using it was because of the weather. We had pretty bad weather that month and I seen [Manager] Mike Aquilina, Mike Aquilina had an incident with his vehicle on slippery roads, is that correct?" Manager Lupis stated that that was correct.

At Claimant Bowers's request, Director Hinnant was recalled to testify. Claimant Bowers asked Mr. Hinnant how come nobody asked him (Mr. Bowers) to let them into the vehicle in Jacksonville to determine if there was a radar detector in the vehicle.

Director Hinnant stated that he could not answer that. Claimant Bowers asked Director Bowers if he or anybody else investigated the gas receipts for December for the company vehicle assigned to Claimant Bowers. He answered that he did not go back to check charges for December. Claimant Bowers then made the following statement on the record:

If you were to investigate that, the [company] vehicle [assigned to Claimant Bowers] was not in use in December because I didn't think it was safe enough to drive according to the road conditions. It would be better for us working in West Virginia for me by using my own personal vehicle. . . .

Douglas McArthur, a personal friend of Claimant Bowers and not a Carrier employee, testified as follows in response to questions from Claimant Bowers. He followed Mr. Bowers in Mr. Bowers's vehicle to Georgia in the middle of 2008. He was there with Mr. Bowers the entire time that Mr. Bowers was in Georgia. He also followed Mr. Bowers in Mr. Bowers's vehicle to Jacksonville. They switched off from time to time between the personal vehicle and the company truck. They were in Jacksonville for four days. McArthur also followed Claimant Bowers back in Mr. Bowers's personal vehicle. On the trip back they also switched vehicles.

In response to questions from the hearing officer, Mr. McArthur gave the following testimony. He followed Claimant Bowers in Mr. Bowers's personal vehicle to Mr. Bowers's home in Dry Dock, Pennsylvania. The two of them switched off between

driving Mr. Bowers's personal vehicle and driving the company vehicle. The reason he followed Mr. Bowers down to LaGrange, Georgia, is that Mr. Bowers has a back issue, and at times his back would give him problems. In addition, he (Mr. Bowers) needed his own vehicle for personal use instead of using the truck. They also switched back and forth between Mr. Bowers's vehicle and the company vehicle from Jacksonville to Braddock, Pennsylvania. Mr. McArthur is not sure why Mr. Bowers drove the company truck home. Mr. McArthur believes that Mr. Bowers had permission to drive a company vehicle home. He was not present when Mr. Bowers received permission.

Claimant Bowers testified as follows. He is Assistant Foreman/Timekeeper on the C5 rail team. He has held the position on and off for eight years. On January 7, 2008, he was Timekeeper on the C5 rail team. He turned in an expense account for use of a personal vehicle. He also drove the company truck. To come from LaGrange, Georgia, to Jacksonville, Florida, for a meeting he used both the company vehicle and his personal vehicle. He drove to Jacksonville together with a friend using both vehicles, swapping the driving between the two vehicles. The reason he used his vehicle was that since he was in Georgia, pretty close to Atlanta, he wanted to drive around Atlanta for his own personal business. He could not do that in the company vehicle. He has taken the company vehicle home on several occasions. He is not authorized to take the company vehicle home. He cannot recall if he has ever asked permission to take the company vehicle home. He took his personal vehicle home to give to his daughter to use. Her

vehicle was having problems. He also needed to go back and grab some company-related material that he had left at home. He did not ask his manager, Mr. Lupis, for permission to do this with a company vehicle. He does not deny turning in an expense account. He did not tell Mr. Lupis that he drove both vehicles or had both vehicles. He did not ask permission for his personal friend to drive a CSX vehicle.

In a closing statement, Claimant Bowers stated that he made a mistake as far as his expense account. It should not have been for January, he stated, but for December. He also may have made a couple of mistakes as far as letting his friend drive the company vehicle, he acknowledged. But it was the only way he could get both of them back safely, he said. He is sorry for it, he declared. His mistake was an honest mistake, he asserted. He just made a mistake on the dates and the time, he stated, but if the Carrier will go back and research the gas receipts from December, it will see that he used his own personal vehicle [for company business].

Following the close of the hearing, L. E. Houser, Assistant Chief Engineer System Production, by letter dated August 8, 2008, notified Claimant Bowers that the evidence presented at the Investigation demonstrated that he was guilty of the infractions charged and that his actions violated CSX Transportation Operating Rules and Regulations as well as the Code of Ethics. "Due to the fact that sufficient evidence and testimony demonstrates your guilt," the letter stated, "and due to the serious nature of the offenses, it is my determination that your discipline is time served up to and including August 8,

2008.”

It is the position of the Carrier that Claimant Bowers was provided a fair and impartial investigation, that it produced substantial evidence of his guilt, and that the discipline assessed was fully justified. The Carrier asserts that Claimant Bowers admitted his guilt, citing testimony where he acknowledged using the company vehicle, in addition to his own, to come to the meeting in Jacksonville and that he took the company vehicle home on several occasions without permission. The discipline assessed of time served was fully warranted, the Carrier argues, for the offenses of falsifying an expense reimbursement form and for fraud.

The Claimant does not deny that he submitted a claim for mileage to attend the company meeting in Jacksonville, Florida, although he drove a company vehicle to Jacksonville. The discipline of time served is not excessive for such an offense. It is true that the Claimant (together with the help of his friend) also drove his personal vehicle to Jacksonville, trading off with his friend the driving of the two vehicles. As he implicitly admitted at the hearing, however, when he acknowledged making a mistake in submitting a mileage claim for January, it was not permissible to charge mileage for the same travel for which he used a company vehicle.

The Board does not find it credible that the Claimant merely made a mistake in writing the month January on the expense form when he meant to write December. Such an explanation might be believable had he not, with the help of his friend, driven his

personal vehicle to the meeting in addition to the company vehicle. Since he did have his vehicle at the meeting, however, it is not likely that he charged the company mileage for his vehicle in error and not intentionally.

The more probable explanation for the Claimant's action is that he justified charging the Carrier for his mileage to the Florida meeting because he had used his personal car for company business a good part of the month of December without charging the Carrier for that month. In his own mind he probably viewed the situation as a trade-off. It is not disputed that, in fact, the Claimant did use his own vehicle for company business in December without charging the Carrier for use of the vehicle.

Of course, to make a trade-off was not something the Claimant was entitled to decide for himself. Where company money or property is concerned, an employee must be scrupulous and ask permission for any deviation from normal procedure. As a Timekeeper who submits time for employees on the team, the Claimant had to know that any claim for reimbursement for mileage or for other purposes had to be accurate on its face. Moreover, there is no way that this Board is able to say that the value of the use of the Claimant's own vehicle was the same for December and January so that it was proper to interchange the charges for the two months. Nor is it plausible that the Claimant is able to make such a statement in good faith. For example, he made no claim that he kept a record of the mileage he drove for company business in his own car.

The Board believes it likely that the reason the Carrier did not impose a greater

penalty on the Claimant than it did is that the Carrier believed that he rationalized his actions on the basis of his use of his personal vehicle in December for company business without charging the carrier for that use. Of course, it was not for the Claimant to make such a calculation. He was required to submit a true and accurate expense form for January, 2008, the same as for any other month. If he omitted to submit a claim for a previous month, he should have brought that fact to his supervisor's attention and followed the supervisor's instructions for correcting the oversight.

In the Board's opinion the penalty assessed was a fair one for the infraction committed. The only questionable element is the amount of time that elapsed before a hearing was held. The Board is of the opinion, however, that this is reasonably explained by the Claimant's initial indication, conveyed to the Carrier through the Organization, that he was intending to voluntarily resign.

The Board, for the reasons explained, believes that there was no intention on the part of the Claimant to defraud the Carrier or to act dishonestly. The Board finds, therefore, that although the discipline assessed was fully warranted in the circumstances, the Claimant's personnel record should be altered to the extent necessary to remove any reference to fraud, falsification, or dishonesty in connection with the Claimant's actions involved in this case.

A W A R D

Claim denied, in accordance with findings.

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 other than that the Carrier shall conform the Claimant's personnel record to the findings in this award with regard to the incident that is the subject of this proceeding.

  
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Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois  
June 7, 2009