

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated February 2, 2010, the Carrier instructed Michael B. Fulp (“the Claimant”) to attend a formal Investigation on February 16, 2010, in the Engineering conference room of the Great Lakes Division office in Indianapolis, Indiana, to determine the facts and place responsibility, if any, in connection with information received on January 18, 2010, that he “falsified federal and CSX Transportation Track Inspection reports and admitted intent to falsify payroll records for work that was supposed to have occurred on January 16, 2010.”

In connection with the foregoing, the letter stated, the Claimant was “charged with conduct unbecoming an employee of CSX Transportation, falsification of federal and CSX Transportation Track Inspection reports, intent to defraud the company for compensation that you were not entitled to receive, willful neglect of duty, failing to protect your assignment, and with possible violation of, but not limited to CSX Transportation Operating Rules – General Rule A, General Regulations GR-1, GR-2, GR-2A, GR-15, and GR-16; CSX Maintenance of Way Instructions 105 – (Instructions for Track Inspections) – pages 1 through 10, Maintenance of Way Instruction 2113 – (Electronic Track Inspection Reporting) – pages 1 through 11; FRA Track Safety Standards, Part 213, subpart A to F, section 213.233, paragraph (b), as well as, CSX Safe Way General Safety Rule GS-1.” The letter stated that the Claimant would be withheld from service pending the outcome of the Investigation. At the Organization’s request the

Investigation was postponed to March 2, 2010.

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 was employed as a Track Inspector with a service date of September 12, 2005. On Monday morning, January 18, 2010, D. C. Justus, Roadmaster at the Hawthorne Yard, Indianapolis, Indiana, and Brandon Webb, Assistant Roadmaster, met with the Claimant. The Claimant had turned in a note stating that he had worked 7 hours "frequency" overtime on Saturday, and 6 hours frequency on Sunday, the previous weekend, January 16 and 17. In addition he had entered into the computer, with his private password, separate Track Inspections reports for Saturday and Sunday showing many track inspections performed on each day. The term "frequency" refers to inspections that must be made at a certain rate, such as two times or three times a week, by Federal Railroad Administration or Carrier policy.

The Roadmaster had worked on Saturday and had noticed no sign of the Claimant. In the conversation on Monday morning the Claimant at first said that he was at work but then, after asked to show his EC1 form that must be filled out when the Inspector gets track authority from the dispatcher, admitted to the Roadmaster and the Assistant

Roadmaster that he had not been on the property that weekend to do any inspections. After the Claimant's admission, the Roadmaster removed the Claimant from service.

In his testimony at the Investigation the Claimant admitted that he entered the inspection reports for January 16 and 17, 2010, into the computer and that he did not perform any of the inspections shown in the reports as being done. He also admitted that he submitted a note showing 7 hours of overtime worked on Saturday, January 16, and 6 hours, on Sunday, January 17. He acknowledged that submitting a note such as the one he turned in is a common way to report overtime worked to a supervisor. The Claimant testified that he himself, or his foreman, inputs the payroll information. He did not know the purpose of informing his supervisor of the number of hours of overtime worked, he stated.

Saturday and Sunday, January 16th and 17th, were not his normal workdays, the Claimant testified, but he told the Roadmaster that he was going to come in to do frequency inspections on those days. The Federal Railroad Administration requires that the tracks in question be inspected twice a week, but the Carrier requires inspections three times a week. The Claimant had told the Roadmaster that he would come in on the weekend to do the third inspection. He did not have permission from the Roadmaster, he stated, not to come in on January 17th and 18th. Asked by the hearing officer, "Sir do you feel that you were dishonest in this matter?" the Claimant answered, "Yes sir." He also answered, "Yes sir," to the hearing officer's question, "Sir do you feel that you willfully neglected your duty in this matter?"

The hearing officer asked the Claimant "why would you input these reports without doing the work?" The Claimant stated:

Under the stress to keep my boss satisfied I've been doing a lot of the other jobs

that were not required as a track inspector. I go over my tracks very frequently[;] the main gets covered more than required. Not having derailments on my track, I do take care of my track. At this time I didn't get out in time to take care of my duties which is my fault, but my boss impresses on me that this stuff can not be turned in late. When I turned it in as done I was going to be going over it the very next day for another frequency again.

I had no intent of falsifying payroll other than to prove that I had . . . did the inspection. As a track inspector, I generally do a lot of the other duties not required of me that my boss removed from inspection duties to do other job tasks that none of the other employees will take on. I frequently run 707's downtown Indianapolis where no other employee will take the time to learn to do that task, which removes me from my service frequently. Getting track time for other teams that are not qualified. Doing a lot of the planning and stuff for jobs that my boss or a Foreman should be taking upon, to give me more time to do my job during the week.

The Claimant acknowledged that he had the opportunity to turn the overtime down for January 16th and 17th, 2010, but stated that he did not because "I do my best to please my boss every chance I can and take care of the duties for him."

In August, 2009, the Claimant testified, he bid off of his Track Inspector job and was awarded another position but was not released by the Roadmaster to take the other position that he was awarded. The same thing happened a second time also within a four-month period, the Claimant stated.

Recalled by the Hearing Officer to testify, the Roadmaster acknowledged that around the end of December or beginning of January the Claimant had bid another inspection job but that he held the Claimant over to make sure that he took care of the frequency inspections required under the Roadmaster's control. The Roadmaster also acknowledged that he has assigned the Claimant to run 707 orders that would have interfered with the Claimant's inspection duties. He would not be able to inspect during the same period that he was running a 707, the Roadmaster stated.

The Roadmaster testified that the reason the Claimant was expected to work on

Saturday and Sunday, January 16th and 17th, 2010, was because the frequency inspections hadn't been taken care of that the Claimant knew that he had to cover. The Claimant, the Roadmaster stated, did not indicate that he did not want to work that weekend.

In a closing statement the Claimant asserted that he was wrong and said that he admitted that to the Roadmaster at their meeting on Monday morning, January 18, 2010. "Under no circumstances was I trying to defraud or intentionally do something wrong," the Claimant declared. He enjoys his job, the Claimant stated, and "I always tried to take care of Mr. Justus, like he took care of us, to get the frequencies and everything taken care of." Whenever the Roadmaster asked him to do other duties than track inspection, the Claimant asserted, he went above and beyond the call of duty to take care of the Roadmaster's requests. The Claimant stated that he "screwed up one weekend" and that he would give up almost everything to keep the job he was working; and that he would even give up his track inspector's rights just to be back on the railroad and working with the guys he enjoys being with and doing something that he is good at. He did not want to see what he holds so dear and is good at thrown away.

Here again we see the playing out of the adage that people do more harm to themselves than is inflicted on them by others. We have an employee who enjoyed his work and was looked upon by his boss as a reliable track inspector and someone skilled at running 707 orders. Why he would falsify inspection sheets and falsely report having worked 13 hours' overtime this Board cannot state. One might argue that the overtime hours were not officially claimed since they were never entered on a payroll form. The inspection reports, however, were official documents entered into the computer by the Claimant for approval by his supervisor. The Claimant falsified not one, but two, such reports in that he did none of the inspections listed as performed in the documents. Those

were major offenses for which the Carrier's Individual Development Personal Accountability Policy permits discipline up to dismissal for a first offense. Falsification of documents is also generally considered in industry to be a dischargeable offense. The Carrier was entitled to conclude that dismissal was appropriate for the Claimant's conduct, and the Board will not disturb its action.

The Organization has brought out that on two occasions the Claimant wanted to bid out of his job to a less stressful track inspection position, but that the Roadmaster held him over. The Organization itself pointed out, however, by reference to the applicable contract provision, that a successful bidder cannot be held over against his will more than five days in an incumbent position. That the Claimant ultimately decided not to vacate his position under the Roadmaster's supervision cannot excuse his misconduct in this case. Nor did the Claimant ask to be released from working on January 16th or 17th, 2010, which he should have done if he felt too stressed or tired to work.

The Claimant also testified that he did not intend to falsify anything but only to show that he did the work because his boss emphasized that the inspections must be done on time. He was going to inspect the very same tracks the next day, he stated. However, the Claimant had to know that he was not being honest by filling out an official report stating that he performed inspections that were never done. He did this twice. In addition, if he wanted to please his boss, why did he not come to work on the two dates in question as he said he would? The Claimant also had to know that it was dishonest to turn in a note stating that he worked 13 hours' overtime that he never worked. The Board cannot find an element of mitigation in this case sufficient to require the Carrier to reduce its dismissal action for so serious an offense as falsification of two official inspection documents.

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
June 4, 2010