

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 March 9, 2010, R. Ross, Roadmaster, instructed J. L. Storozuk ("the Claimant") to attend a formal hearing in the Albany Division headquarters building in Selkirk, New York, on March 22, 2010, "to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1815 hours on Thursday, February 25, 2010, when CSX Vehicle 95085 was reported missing from CSX property and later discovered at a private residence (83 Lower Westfield Street Holyoke, MA) that you had previously told Roadmaster Dick Ross that you had been assisting the owner making repairs." The letter charged the Claimant "with unauthorized use of a company vehicle, conduct unbecoming a CSX Employee and dishonesty in possible violation of but not limited to, CSX Transportation Operating Rules - General Regulations - Rule GR-2, (4), GR-2(8), GR-3(2), 713 (1-A) as defined in section 7, page 4 of 17 'On Track Equipment', L (2nd paragraph), and A." The letter confirmed that the Claimant was being withheld from service pending the outcome of the hearing.

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.

On Thursday, February 25, 2010, an employee, Rich Gerard, reported to Roadmaster Ross that vehicle 95085, a hi-rail truck, was missing from the yard when he looked for it on returning to the yard from work at approximately 6:15 p.m. He needed the truck to put his boards in. Roadmaster Ross suspected that the truck might be at 83 Lower Westfield Street in Holyoke, Massachusetts, a nearby residence. The Roadmaster explained that he had been told previously by the Claimant that he was working at that address for a friend or a relative. In addition, the Roadmaster stated, the Claimant was one of the last people in from work that day, and his wife had been taking him to and from work because the Claimant had had an accident with his personal vehicle. The Claimant was on a four days per week 10 hours per day schedule. His work hours, the Roadmaster testified, were from 6:30 a.m. to 4:30 p.m. The Claimant testified that his workday ended at 5:00 p.m.

The Roadmaster testified that he drove to the Holyoke residence and arrived there at approximately 6:40 p.m. "I drove in the driveway," he stated, "around to the back of the house, and the hi-rail vehicle was parked at the residence, this was approximately 6:40 P.M. on Thursday, 02/25." At approximately 7:00 o'clock, the Roadmaster stated, he called his boss, Mr. Cole, and told him that a company vehicle was taken without permission and that it was parked at the Holyoke residence. He then called the Claimant on the latter's cell phone and left a voice message. The Claimant saved the voice message, and it was played at the hearing:

Oh, Jody, Dick Ross. It's about 7:00 o'clock Thursday night and I have a missing

vehicle and it is reported to be in your driveway. I drove up there and identified that, yes, Mr. Squires' truck is in your driveway. I have a – please give me a call, thank you.

The Claimant did not return the phone call that evening.

Asked by the hearing officer to be more specific about the vehicle he saw in the driveway, the Roadmaster testified that the vehicle he saw was definitely a CSX hi-rail vehicle. It had hi-rail gear, he stated, and a strobe light on the roof. He described the vehicle as a "CSX club cab vehicle." It had front and rear seats, he stated, and "front doors and a back door for the short track." He added that it was a full-size pickup. "It had a hi-rail white rack on the top," he testified, "which is the strobe light, the rack for the strobe light and the strobe light." It was a white vehicle. He did not see the CSX emblem, Roadmaster Ross testified, but he recognized the vehicle as Mr. Squires's vehicle, the previous Roadmaster's vehicle. He believes that the 95085 vehicle is a Chevy, the Roadmaster testified, but he is not 100 percent sure. It's not a Ford truck, he stated.

On Friday morning at approximately 10:00 o'clock the Roadmaster received a phone call stating that the vehicle he was looking for was at the yardmaster's office. That is a different location from Roadmaster Ross's office on the north side of the yard where the vehicle is normally parked. The yardmaster's office is also called the field lobby. "This hi-rail vehicle," the Roadmaster stated, "is never parked at the yardmaster's office on the south side of the yard." The keys for the 95085 were not in the box in the locker room where they are normally kept and the Roadmaster could not find them anywhere. In order to move the truck back to the compound where it was normally parked, the Roadmaster had to drive to Warren to pick up a set of keys from Mr. Gerard, who had the only spare set.

Around 12:30 on Friday, the Roadmaster testified, the Claimant returned his call of the previous evening. The Claimant said that he left the truck at the field lobby building the previous day; that he had not called earlier because he did not check his messages; that the truck could not be seen in the driveway from the street; and that somebody was f___g with the Roadmaster. Later that afternoon the Roadmaster informed the Claimant that he was out of service and that the charges would be coming in the mail. The following Monday afternoon Mr. Gerard reported to the Roadmaster that the keys to vehicle 95085 were now in the box and that he had found them there Saturday afternoon when he returned from working overtime that day.

The Roadmaster testified that he did not authorize the Claimant to use vehicle 95085 while off duty. It was dishonest of him, the Roadmaster stated, not to come forward and say, "I borrowed the vehicle." In his conversation with the Claimant on Friday, the Roadmaster testified, the Claimant denied using the vehicle. That conduct, the Roadmaster stated, violated General Regulations GR-2 paragraphs 4 and 8, which state, "... Employees must not: ... 4. Be ... dishonest ... 8. Conceal facts concerning matters under investigation."

The Claimant, the Roadmaster testified, also violated Rule 713 1. a that states as follows: "713. When operating on-track equipment: 1. Do Not a. Use for purpose other than Company business." The definition for "On-Track Equipment" includes "1. Vehicles equipped with hi-rail attachments. ... " Vehicle 95085 had not been used for a couple of days as of February 25, 2010, the Roadmaster testified, because it had just returned from the shop.

The Claimant testified that on the date of the occurrence he was a vehicle operator but that he has since bid into a machine operator job. His length of service with the

Carrier is two years. He described the events of February 25, 2010, as follows. He was working that day with an employee named Tim doing switch handles in the Palmer yard. They came back to West Springfield. Tim left early and the Claimant was left by himself. Earlier in the day he had been instructed by Roadmaster Ross to go to Westfield, Massachusetts, to retrieve a grade-all piece of equipment and return it to West Springfield yard. Another employee drove him to Westfield, and he picked up the grade-all and drove it back to West Springfield yard.

Around 4:45 p.m. [the Claimant's testimony continued] another employee named Al offered him a ride home because he did not have his car, but he told Al that his wife was on the way. His wife called him on the cell phone and said that she was running late. He told her to meet him at the field lobby. He did not want to stay at the building where the Roadmaster has his office because of an incident he had earlier that day with the Roadmaster, who "was very verbal in front of several other employees and a few other managers from other departments about the grade-all not being moved." He felt uncomfortable remaining there.

He got into vehicle 95085, the Claimant testified, and drove it to the field lobby, which is the trainmaster's office, on the other side of the yard. He was there for 15 or 20 minutes, the Claimant stated, and his wife picked him up. According to the Claimant they then drove to the school where his wife was studying phlebotomy and was taking a certification test that evening. On the way, he testified, shortly before 6:00 p.m., they picked up his wife's friend, who was taking the same course and also being tested. He remained at the school, the Claimant testified, until after the women completed their test.

After the test, according to the Claimant, he drove with his wife back to the field lobby building because he had left his keys on top of the refrigerator inside the building.

He saw the truck (vehicle 95085) that he had parked there still standing there, he stated, and a road gang truck next to it. This was about 7:30 p.m. The next morning, the Claimant testified, he had a conversation with Roadmaster Ross about the vehicle, and he told him that it was parked at the field lobby and that the keys were in the box. On Saturday afternoon, according to the Claimant, the Roadmaster called him and said that he (the Claimant) was out of service for using the vehicle.

In support of his position the Claimant produced two written statements, which were introduced into evidence. The first statement was by Ashley Martin dated March 6, 2010, and addressed to the officer of the Organization who represented the Claimant in the hearing. It stated that she was a student at American Red Cross together with the Claimant's wife and that on February 25, 2010, shortly before 6:00 p.m. they picked her up and drove her to the Red Cross office where both women took their exam. Ms. Martin's statement said that the Claimant stayed in the Red Cross office while they took their exam and that the Claimant and his wife left a little after 7:00 p.m.

The second statement, by Ronald Gebo, was dated March 5, 2010, and stated:

To whom it may concern,

This letter is in regards to the evening of February 25th. I was asked by Jody Storozuk several days earlier to pick up some scrap metal at the address of 83 Lower Westfield rd, in Holyoke, Ma. Jody Storozuk had told me he had moved from the home and needed some things removed from the property. I was at that address on the night of February 25th, 2010. Jody Storozuk was not at the residence while I was there. I went to the address above at approx. 6:30 pm and was there till approx. 7:30 pm. I drive a 2000, Ford F-250, white in color and it has several tool boxes as well as a latter [sic ladder?] rack, at no time while I was there at 83 Lower Westfield rd, was Jody Storozuk there nor was there any Railroad vehicles, (CSX trucks). I did see one of Jody Storozuk's relatives at the property that night. I believe it was his brother. I did not see anyone else there at the home that evening nor did I see anyone else come into the driveway to the rear of the home where I was parked. If there are any questions please don't hesitate to call.

The Claimant testified that Ronald Gebo is a man that picks up scrap from the area. He went to the Holyoke address, the Claimant stated, to pick up scrap. A couple of weeks earlier, the Claimant testified, he (the Claimant) had moved from that house.

The Claimant testified that he went off duty at 5:00 p.m. on February 25th and drove to the field lobby at approximately 5:10 p.m. The hearing officer asked the Claimant what route he took to get there. He described his route which included traveling on both railroad and City property. Asked whether he had permission to drive vehicle 95085 from the Roadmaster's headquarters to the field lobby, the Claimant stated, "At that particular time no but I was driving that truck prior to that also."

The Claimant testified that when he and his coworker came back from Palmer, where they had used a boom truck, they parked the boom truck, and he then drove vehicle 95085. He did things in the yard, he stated, such as cleaning switches, checking points, and greasing switches. The hearing officer asked the Claimant, "Did you use or drive CSX vehicle 95085 to that residence on February 25, 2010, after 1815 hours?" and he answered "No." The Claimant further testified, "I did not drive the vehicle over to that property. . . . I did not drive a railroad vehicle over there." The Claimant acknowledged that his use of vehicle 95085 on February 25th to drive from the headquarters building to the field lobby over city streets after his workday ended at 5:00 p.m. was unauthorized.

The hearing officer recalled Roadmaster Ross to testify and asked him if he was aware that on the afternoon of February 25th upon returning to Springfield yard that the Claimant used CSX vehicle 95085. He answered that he was not aware of that. "The vehicle," the Roadmaster testified, "to my knowledge, was left in the yard." The Roadmaster stated that he examined the Daily Vehicle Inspection Form book for vehicle 95085, and it showed that employee Scott Petraitis used the vehicle on February 17, 2010,

and that the next time the truck was used was March 1, by Rich Gerard. It was in the shop after Mr. Petraitis used it, the Roadmaster explained.

The Roadmaster testified that his men are instructed to fill out the inspection form prior to using a vehicle and to look at the inspection form for the last time it was previously driven for any defective conditions indicated. The Daily Vehicle Inspection Form book for vehicle 95085 was introduced into evidence. It contained completed inspection forms for the period 1-5-10 through 3-7-10. After the 2/17/10 inspection form, completed by operator SP, the next inspection form in the book was dated 3/1/10 and signed Richard Gerard. The hearing officer stated on the record, "Let the record show that I do not see any indication of any pages ripped out or removed from this book so it looks like they're consecutive days, 2/17 to 3/1 tabbed, which would indicate that apparently one of two things, either a driver that operated the vehicle failed to complete the Inspection Form or that the vehicle, as Mr. Ross testified, was not used between those dates."

The hearing officer recalled the Claimant as a witness. He testified that Mr. Gebo's vehicle did not have hi-rail gear on it. He stated that when he drove vehicle 95085 during working hours on February 25th he completed a vehicle inspection form for the vehicle. Asked if he could explain the absence of an inspection form for February 25th in the inspection form book, the Claimant stated, "I don't believe all the books were brought in." The Claimant acknowledged that there was supposed to be only one book per vehicle. He testified that he used the truck several times between February 17 and March 1 and that other people have used that truck also between those dates. "Evidently there's another book that's missing," the Claimant stated. The Claimant acknowledged that all the books for a vehicle are supposed to be left in the vehicle.

The hearing officer asked the Claimant, "So is it your testimony that you filled out another book for the 95085?" The Claimant answered:

Did I write in another book, yes, I did. Did I start the other book, no, I didn't. There was another book in there with other people that inspected it and I just looked in that book and followed down with the previous pre-trip inspection . . . for the vehicle, and wrote in that particular book.

The inspection book, the Claimant stated, is supposed to be left in the door or in the center console, but is not always left where it's supposed to be. When he drove the vehicle, the Claimant testified, the book was in the center console. When he completed his shift on February 25th, the Claimant stated, he left the inspection book in the vehicle.

Questioned by the hearing officer where vehicle 95085 was to be left at the end of the workday, the Claimant testified that he believed it was at the Roadmaster's office. Asked if the reason for that was so that when people report to work at the Roadmaster's office they would have vehicles there to use to perform their duties, he stated, "I'm assuming so, yes." The Claimant testified that he spoke on the phone with Rich Gerard Thursday night, February 25th, around 8:00 p.m. and told him that vehicle 95085 was parked at the field lobby.

The hearing officer recalled the Roadmaster to testify and asked him if he personally retrieved the Daily Vehicle Inspection Form book from vehicle 95085. The Roadmaster stated that he did. He inspected the vehicle for any other inspection form books, he stated, and the one he produced at the hearing was the only inspection log in the vehicle. The 95085 truck, the Roadmaster testified, is stored at his office on the north side of the yard at the end of the day. It is never left at the field lobby, according to the Roadmaster.

The Roadmaster testified that he spoke to Jaime Corvel, the yardmaster, on March

4th relative to Friday, February 26th, and Mr. Corvel said that he had noticed the 95085 vehicle parked at the field lobby because it is never parked on the south side next to his building. He also questioned Jaime Corvel's brother, Mark Corvel, who is night yardmaster, on March 4th, the Roadmaster testified, and Mark Corvel said that he did not remember if there was only one or there were two vehicles parked at the field lobby on Thursday night.

The Roadmaster testified that after Mr. Gerard told him that vehicle 95085 was missing around 6:15 p.m. on Thursday, February 25, he did not speak again to Mr. Gerard until the next day. He was not aware, the Roadmaster stated, that the Claimant had called Mr. Gerard on Thursday evening and informed him that the truck was parked at the field lobby. He learned that the truck was there, the Roadmaster testified, Friday morning around 10:00 o'clock when some of the men called him and said that the vehicle he was looking for was at the field lobby. Mr. Gerard was not the one who called the Roadmaster.

In a closing statement the Claimant asserted that he believes the present action was taken against him as a punishment or retaliation from the Roadmaster for using the ethics hotline to make reports against the Roadmaster. He was taken out of service for supposedly driving a truck for an hour or two, he stated, when other employees are involved in more serious incidents and are never taken out of service.

In its closing statement in behalf of the Claimant, the Organization argues that the Carrier has failed to prove its case against the Claimant or that he violated any rules or regulations. No solid evidence was produced, the Organization contends, that the Claimant used the Carrier vehicle without authorization. The Claimant, the Organization asserts, should be returned to service and made whole for any lost wages or benefits as a

result of the charges.

Following the close of hearing, by letter dated April 6, 2010, the Division Engineer informed the Claimant that after a thorough review of the transcript and exhibits, the Carrier concluded “that you are guilty as charged.” The discipline assessed was a 40 day actual suspension, including the time that the Claimant was held out of service.

This case turns on a credibility resolution. Does one believe that Roadmaster Ross correctly identified the missing CSX hi-rail truck in the driveway of the Holyoke property or does one believe the Claimant’s denial that he drove the truck to the property the evening of February 25, 2010? The Board believes that there is substantial evidence to support the Carrier’s determination that the Roadmaster did see the truck on the property and that the Claimant did drive the truck there, dishonestly denied doing so, and attempted to conceal his actions.

First, Roadmaster Ross is a veteran railroad man with 30 years’ service on the railroad. He is not likely to mistake a pickup truck not equipped with hi-rail gear, such as Ronald Gebo’s, for a vehicle equipped with hi-rail gear. The Roadmaster’s testimony placed vehicle 95085 on the Holyoke property at approximately 6:40 p.m. on February 25, 2010, a strong indication that it was the Claimant who removed the truck from company premises without permission since no other employee had an association with the Holyoke property than the Claimant. By his own testimony, Claimant had lived in the property not long before February 25th and as of that date still had some of his personal property on the premises.

Second, the Claimant admitted that he removed the truck on February 25th from where it was parked outside the Roadmaster’s office. However he testified that he drove it to the field lobby building and not to the Holyoke address from which he had recently

moved. He claims that he drove it there because he didn't want to stay at the office after the incident he had with the Roadmaster earlier that day. That claim is not credible. Claimant Storozuk had finished his work for the day at 5:00 p.m. and, he states, was waiting for his wife to pick him up. We are talking about a short period of time, perhaps 30 minutes at the very most. It is not believable that because of his alleged discomfort at being on the same premises for 30 minutes with his Roadmaster, who, he testified, had berated him earlier that day, he would have taken a company truck without authorization and driven it across city streets to the other side of the yard and parked it in the south yard, a good distance from its normal parking place in the north yard.

There is no testimony that the Claimant was even in the same room with the Roadmaster. Yet the Claimant would have this Board believe that his discomfort level was so high that he could not wait for his wife in the north building for the short period of time involved but had to take a truck without permission and drive it to the other side of the yard, park the truck where it did not belong, and wait for his wife there. The Board does not find that story believable.

As noted, this case turns on credibility. Not only was the Claimant's explanation for allegedly driving the truck to the field lobby building not credible, but he also made up a story about operating the truck during his shift on February 25th. He testified that before operating the truck that day he filled out an inspection form in the book that was on the truck. The Claimant's testimony contradicted the Roadmaster's testimony that the 95085 truck was not used on February 25th. In addition, the inspection form book did not contain any inspection form dated February 25, 2010, contrary to the Claimant's testimony that he filled out a form. When confronted by that fact, the Claimant testified that there had to be another inspection form book. However the Roadmaster had checked

the truck and found only one inspection form book, which was introduced into evidence at the hearing. In addition, the Claimant acknowledged that there is only supposed to be one inspection book per vehicle. The Board finds that the Claimant did not testify truthfully about operating the 95085 truck during his shift on February 25th or about filling out an inspection form for the vehicle on that date.

With regard to the written statements presented at the hearing by the Claimant and introduced into evidence, there is no necessary inconsistency between Ms. Ashley Martin's statement and the Carrier's determination that the Claimant drove the 95085 vehicle from the premises to the Holyoke address without authorization. The Claimant finished work at 5:00 p.m. according to his testimony. There was plenty of time for him to have driven the truck to the Holyoke address, be met there by his wife, and then pick up Ms. Martin a little before 6:00 p.m. to drive her to the Red Cross office to take her certification examination.

With regard to Ronald Gebo's written statement, as the hearing officer pointed out, the statement was not notarized. More important, Mr. Gebo did not present himself for cross-examination. His statement is dated March 5, 2010, some eight days after February 25th. It would be important to question him about how certain he was about the date and the times appearing in his statement. In addition, his relationship to the Claimant, his activities on the premises, and other matters that would be important areas to explore were all foreclosed from examination by the Carrier because Mr. Gebo did not appear at the hearing. The Board therefore can give very little weight to Mr. Gebo's statement. It cannot overcome the fact that the Claimant's explanation for removing the truck from where it is normally parked was not believable and that he was otherwise not a credible witness.

The Board finds that the Carrier has proved its case against the Claimant, which turns on credibility, by substantial evidence. The claim will be denied.

In the interest of attempting to be helpful to the Claimant, the Board adds the following remarks. The Claimant should realize that when he speaks out publicly against his Roadmaster, calling him a dishonest person (Tr. 58), it tells us more about the speaker than about the Roadmaster. This Board was impressed by the Roadmaster's effort to give honest, straightforward testimony. He admitted that he did not see the numbering on the vehicle in the driveway of the Holyoke property. When asked if the vehicle he saw had a CSX emblem on it, he admitted that he did not see the emblem on the truck (Tr. 35). If the Roadmaster were dishonest, he could easily have stated that he saw the CSX emblem and the number on the vehicle and thereby strengthen his testimony. But he did not do so.

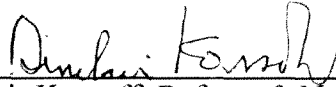
The Claimant used considerable effort and ingenuity in an effort to evade responsibility for breaking the rules. His record for the short two years that he has been with the railroad is not one to be proud of. However, it is not too late for the Claimant to turn his record around and become a model employee, or at least a good one. Careful compliance with regulations and loyalty are traits that are prized in the industry. If he wishes to have a future in railroad work, he must become a team player, which means working well with all members of his group, including management. He must direct his efforts and intelligence in a positive rather than a negative way. At this stage the Claimant appears to be at a crossroads. He must consider carefully which path he chooses to follow.

A W A R D

Claim denied.

ORDER

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

A handwritten signature in cursive script, appearing to read "Sinclair Kossoff", is written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
July 8, 2010