

PUBLIC LAW BOARD NO. 7163

AWARD NO. 73

CASE NO. 73

**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. D. Gaskins for his alleged conduct unbecoming a CSX Transportation employee, unauthorized use of a company credit card, dishonesty, fraud, theft, as well as possible violations of, but not limited to, CSX Operating Rules - General Rules A, General Regulations GR-2, as well as CSX Code of Ethics and CSX Policy on Expense Reporting, in unjust, unwarranted, excessive, based on unproven charges and in violation of the Agreement (System File D70121409/2008-044108)
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Gaskins shall be immediately reinstated with all seniority and benefits intact and further that he be compensated for any and all straight time and overtime hours he could have performed service for the Barrier beginning February 3, 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.

Claimant was dismissed from his management position as a Roadmaster for the reasons expressed in the above Statement of Claim. Thereafter, the instant proceeding was initiated to deal with any rights he held under the applicable Agreement.

The significant background facts may be summarized beginning with April of 2008. Claimant had been a Roadmaster for some six years at that time. His position equipped him with a Carrier-supplied credit card for authorized business-related purchases. One of the staff engineers who was charged with monitoring the division budget came across some suspect credit card purchases made by claimant. The staff engineer was not claimant's supervisor and had not been reviewing his expense reports when they were submitted. On May 13, 2008, the staff engineer brought her concerns to the attention of the Carrier's internal auditors. The Internal Auditing

Department commenced an investigation of claimant's credit card purchases over a several-month time frame that concluded with the issuance of its formal report on February 3, 2009. That same day, claimant was given notice of the instant investigation process under the Agreement.

The report of the Internal Auditing Department noted several areas of unauthorized and/or improper use of the credit card as well as certain falsification of expense reports and fabrication of receipts. These findings were reached after interviewing claimant as well as several of the persons named on the expense reports he submitted.

The auditor's report also showed that claimant acknowledged falsifying many of his meal expense claims to conceal the large individual cost expenditure by falsely listing the name of another employee who dined with him. The auditor's investigation revealed that the persons named did not participate in the meals as claimant's reports said they did. Beyond the summary given thus far, we need not go into the many details of the auditor's report.

Claimant provided an explanation of several of the expenditure items that were thought to be improper. He also claimed that he was heavily medicated at the time of his interview with the investigating auditor. The auditor, however, did not agree that claimant informed her that he was under the influence of any medication. Moreover, claimant did not identify the type or dosage of the alleged medication. Nor was there any medical information to establish that he suffered under any cognitive disability at the time of his interview. Finally, although he provided some explanations, he did not account for the number of falsified meal expense reports he filed. In addition, claimant admitted that he manufactured receipts for many of his meal expense reports.

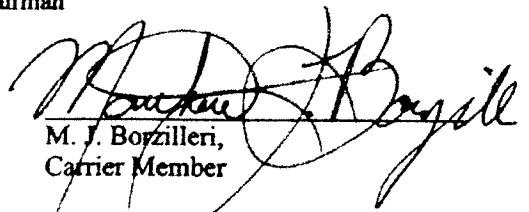
Our review of the record before us does not reveal any procedural irregularities of significance. Turning to the merits, in light of the foregoing discussion, we find that the Carrier's disciplinary decision was supported by substantial evidence in the record. Given the nature of the conduct involved, we do not find the Carrier's disciplinary penalty decision was unreasonable, harsh or excessive.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


Kevin Evanski,
Organization Member


M. J. Bozilleri,
Carrier Member

Date: 11/18/2010