

AWARD NO. 87
Case No. 87

Organization File No.
Carrier File No. 2008-017274

PUBLIC LAW BOARD NO. 7163

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROtherHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The discipline (withheld from service beginning March 20, 2008 and subsequent dismissal by latter dated April 24, 2008) imposed upon Mr. R. Merday in connection with charges of dishonest, fraud, theft of company material, unbecoming conduct and alleged violation of CSX Operating Rules - General Rules A and L, General Regulations GR-2, GR-3, GR 5 and CSX Code of Ethics was arbitrary, capricious and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Merday shall now have this discipline removed from his record and he shall be reinstated to service and compensated for all time lost, as well as have all other rights and benefits restored that may have been lost as a result of this removal from service and discipline.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was first hired by the Carrier on July 28, 1997. On February 14, 2001 he was promoted to the non-contract position of Roadmaster. At all times relevant to this dispute, Claimant

was employed at Rice Yard in Waycross, Georgia. Beginning on February 18, 2008, there were rumors that Claimant was selling railroad scrap. Acting on these rumors, Engineer-Track B. R. McDaniel contacted Special Agent Moore on February 27, 2008 regarding missing track material. Two days later, Moore located the material at Waycross Recyclers. Moore then obtained invoices from Waycross Recyclers indicated that the material had been sold by Claimant. Moore and McDaniel then met with Claimant, who admitted selling the material for a total of \$15,204.00, which he had deposited in his personal checking account. On March 13, 2008 Moore learned that Claimant had made a partial reimbursement to Waycross Recyclers, who returned the material to the Carrier on March 26, 2008.

On March 20, 2008, Division Engineer Foster notified Claimant that he was removed from his position as Roadmaster and withheld from service pursuant to the Collective Bargaining Agreement. The same day, Engineer-Track McDaniel directed Claimant to attend a formal investigation at which he was charged with the sale of this material. The investigation was scheduled for April 8, 2008.

The Organization first protests Claimant's dismissal on the basis that the Carrier failed to schedule the investigation within twenty days of its having knowledge of Claimant's involvement in these transactions. It cites Rule 25(d) of the Agreement, which states:

An employee who is accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused with copy to the union representative. The hearing shall be scheduled to begin within twenty (20) days from the date management had knowledge of the employee's involvement. A hearing may be postponed for a valid reason for a reasonable period of time at the request of the Company, the employee, or the employee's union representative. A hearing for a furloughed employee involving other than a major offense shall be automatically postponed and rescheduled within thirty (30) days of the employee's return to service.

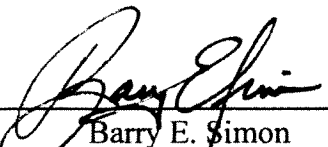
The Carrier replies that it first had knowledge of the offense on February 29, 2008 and issued the notice of investigation on March 20, 2008, twenty days later. While it is of no consequence in this case, the record before the Board shows that this provision had been amended by Side Letter 22 to the June 1, 1999 System Agreement to change the period of time before the investigation from twenty days to thirty days. Whether it is the original language of Rule 25(d) or Side Letter 22 that applies, the Carrier misinterprets the time limit. The rule governs the timing of the investigation, not the issuance of the notice of hearing, relative to the Carrier's knowledge of the employee's involvement in the offense.

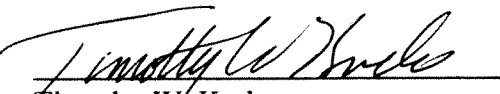
Although it is true that the Carrier, under Side Letter 22, is required to conduct the investigation within thirty days of management having sufficient knowledge of the circumstances surrounding the investigation, this case presents a unique wrinkle. At the time management learned that Claimant had sold company material, he was not a member of the bargaining unit. Therefore, the Agreement did not apply to him. The same day he was removed from his Roadmaster position and reverted to the craft, the Carrier served the notice of investigation upon him. The hearing was scheduled for April 8, 2008, nineteen days later. Thus, we find that the Carrier was in compliance with the time limit rule.

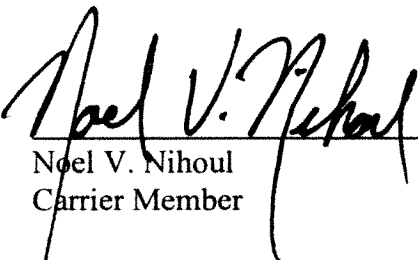
With respect to the merits, the fact that Claimant took company material without authority and then sold it is undisputed. The Organization maintains that he used the proceeds of the sale for the benefit of the Carrier does not change the nature of his offense. The Carrier's policy clearly states that the Purchasing and Materials Department has the responsibility and "sole authority for the

sale and or disposition of surplus, obsolete and scrap assets and materials.” Regardless of how Claimant spent the money, his offense warranted his dismissal.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member *April 8, 2011*


Noel V. Nihoul
Carrier Member

Dated: *March 28, 2011*
Arlington Heights, Illinois