

AWARD NO. 90
Case No. 90

Organization File No. Underwood Dismissal
Carrier File No. 2007-001651

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 dismissal of Machine Operator W. Underwood for violation of Operating Rules GR-1 and GR-2, Rule 26(a) of the Schedule Agreement and the conditions of his leniency reinstatement in connection with failure to protect his assignment on August 23, 2007 through August 28, 2007 is unjust and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, we request that Mr. Underwood be granted remedy in accordance with Rule 25, Section 4 of the Agreement.

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.

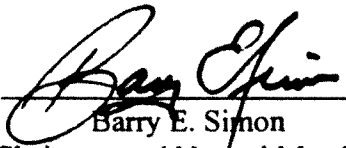
On January 31, 2007, Claimant accepted the Carrier's offer of a leniency reinstatement stemming from charges dated January 13, 2006 that he had violated Rules GR-1 and GR-2. As part of that reinstatement, he was placed on a six month probation period with respect to protecting his

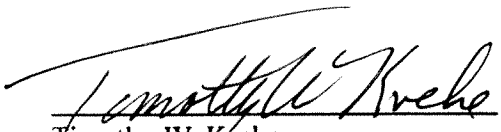
assignment, absenteeism and General Rules 1 and 2A. During that probation period, any proven violation would result in his termination without the right of appeal. Claimant returned to work under this agreement on February 20, 2007.

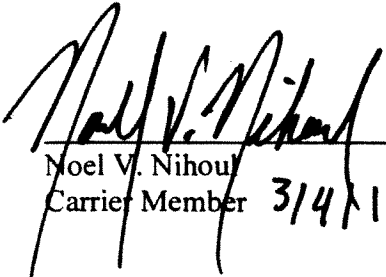
On August 23, 2007, Claimant was absent from work and had not called in to request permission to be absent. He continued to be absent in this manner through August 28, 2007. Consequently, he was directed to attend a formal investigation at which he was charged with conduct unbecoming an employee, insubordination, failure to protect his assignment and being absent without proper authorization. In addition to referring to the dates of August 23 through 28, the Notice of Investigation indicated that absences on June 4-10, July 2-12 and August 29 and continuing would be reviewed. The investigation, after being postponed at the request of the Organization, was scheduled for October 15, 2007. Claimant was not in attendance due to his incarceration. The investigation was conducted in his absence.

Our review of the record of the investigation establishes that the Carrier had substantial evidence to support its charge that Claimant was absent without authority on the dates cited. Payroll records indicated he was absent a total of twelve days between June 4 and August 20, at which point he stopped coming to work altogether. Claimant had been disciplined several times in connection with his absenteeism. In light of his prior record, including his leniency reinstatement, we find no basis for modifying the discipline imposed against Claimant. In reaching this conclusion, we have considered the various objections raised by the Organization and find them to be unpersuasive in this case.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member *March 4, 2011*


Noel V. Nihoul
Carrier Member *3/4/11*

Dated: *February 15, 2011*
Arlington Heights, Illinois