

PUBLIC LAW BOARD NO. 7288

AWARD NO. 3

CASE NO. 3

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Janice K. Frankman

DECISION: Claim denied

STATEMENT OF CLAIM:

Claimant D.A. Burgin appeals Dismissal after being withheld from service on July 31, 2008, for alleged violation of CSX Operating Rules General Rules A; General Regulations GR-2 (4), (6), (7) and (8); and GR-2A and Safe Way Engineering Department Safety Rule GS 1 resulting in charges of conduct unbecoming, unauthorized use of a company credit card, theft of company property, endangering life and property, making false statements and withholding information. Dismissal based upon theft of credit card from Company and use to purchase gasoline for personal vehicle on July 4 and 7, 2008; and upon July 23, 2008, incident when CSXT Railroad Police received call requesting Claimant appearance in County Attorney's Office to satisfy bad check.

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee 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 herein; and that the parties were given due notice of the hearing.

Claimant commenced service with Carrier on July 10, 2006, and holds seniority rights in the Engineering Department in the position Blue Hat Operator and Lubricator at Siebert Yard. On July 23, 2008, he admitted to CSXT Police that he had stolen a company credit card and purchased gasoline on July 4 and July 7, 2008, for use in his personal vehicle. He also admitted that he had been contacted by the County Attorney's Office to satisfy a bad check written either by himself or his former wife. During three years prior to date of incidents, Claimant received Coaching/Counseling/ICI (9/6/2007); opted for Time Out after Charge Letter for failure to perform duties (9/10/2007); waived hearing for absent/plead guilty (9/14/2007); received discipline letters for conduct unbecoming/ 10 days actual suspension (9/14/2007), for surrender seniority as track inspector for 1 year (9/14/2007), and for absenteeism/30 days actual suspension (6/2/2008); and General Correspondence for sleeping/30 days actual suspension (11/15/2007).

During the course of investigating the credit card theft and use matter, Claimant's employer was contacted by the District Attorney's office for assistance. Claimant explained to CSXT Police on July 23, 2008, that he and his wife had divorced, and that he did not have money to satisfy the check or to buy gas for his vehicle to visit his children, the reason he stole the credit card. CSX Special Agent Address spoke with Claimant and District Attorney's office facilitating resolution of the bad check matter. The DA had warned that a warrant for Claimant's arrest could be issued. Agent Address knew that Claimant had failed to appear at DA's office as promised and also that he had satisfied the bad check the next day. No warrant was issued for his arrest.

Investigation hearing was postponed several times at Organization request and one time at Carrier request. At hearing on November 13, 2008, Claimant apologized for his mistakes, asserted rehabilitation after receiving services at a rehabilitation center, declared his desire to remain employed doing work he liked with people he liked and promised he would never make the same mistakes again.

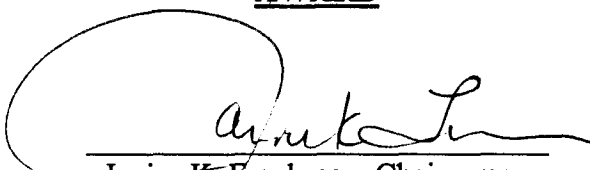
Notice of Discipline issued December 2, 2008, concluding all charged Operating Rule and Regulation and Safe Way violations had been proven warranting immediate dismissal. Claimant appealed dismissal which was submitted to Carrier by letters (2) dated January 9, 2009, and stamped received January 16, 2009.

Under CSX General Operating Rules and Regulations, Employees are required to know and obey rules and special instructions [General Rule A], behave in a civil and courteous manner and must not be disloyal, dishonest, or immoral. [GR-2 (4)] Criminal conduct which indicates a potential danger to the company, its employees or the public is prohibited. [GR-2A]

Carrier provided substantial evidence in support of charges relating to theft and use of credit card. Major offenses under IDPAP included violations of GR-2 and 2A. Claimant's service record includes discipline for serious offenses within the three years preceding the July 4 and 7, 2008, incidents, and he has received progressive discipline. There is insufficient detail to determine whether any of the earlier incidents constituted a major offense. Claimant has failed to provide sufficient mitigating factors to reverse Carrier's decision to dismiss him. The Claim is properly denied.

AWARD

Claim is denied.



Janice K. Frankman, Chairperson
Neutral Member

Dated: May 8 2009