

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 27, (Case No. 27)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2013-137884)**

William R. Miller, Referee and Neutral Member
P. E. Kennedy, Employee Member
R. Miller, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged J. B. Meekins with violation of Operating Rules - General Rule A, General Regulations GR-1 and GR-2 and was substantial evidence adduced at the Investigation on December 5, 2012, to prove the charges; and was the discipline assessed in the form of permanent dismissal warranted?

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute.

The Board has thoroughly reviewed the record and determined that the Carrier complied with Rule 25 of the Agreement and the Claimant was afforded all of his "due process" Agreement rights.

On November 9, 2012, Claimant was directed to attend a formal Investigation on November 19, 2012, which was mutually postponed until December 5, 2012, concerning in pertinent part the following charge:

"...to determine the facts and place your responsibility, if any, regarding your failure to report to your assignment beginning on Thursday, October 25, 2012, and continuing. Additionally, the purpose of this investigation is to develop the facts and determine your responsibility, if any, concerning what allegedly appears to be inaccurate and/or inconsistent information regarding your hardship request to report to an alternative location to from Hamlet, NC, to Dillon SC facilitate your hardship, in addition to your alleged involvement with the Employee Assistance Program.

In connection with the above, you are charged with failure to protect your assignment, failure to properly perform the responsibilities of your position, providing false and/or misleading information to your supervisor, and possible violations of, but not limited to, CSXT Operating Rules - General Rule A; General Regulations GR-1 and GR-2."

On December 21, 2012, Claimant was notified that he had been found guilty as charged and was assessed discipline in the form of permanent dismissal. Subsequently the Claimant requested expedited handling of his case as provided for in Appendix (N) Expedited Discipline Agreement of June 1, 1999 BMWE/CSXT Agreement.

The facts indicate that the Claimant was regularly assigned as a Machine Operator at Cayce, SC, when he made a Hardship Request Transfer so as to be in closer proximity to his home for financial and marital reasons. On October 24th, the Claimant made arrangements with the Carrier to work in Dillon, SC, on October 25 and 29, 2012, because that work site was closer to his home. The Carrier further agreed to allow the Claimant to work at Florence, SC, beginning on October 30th that was even nearer his residence. The Claimant did not report for work on October 25, 2012, or on October 29, 2012, his next scheduled work day. The Claimant was instructed to report for work in Florence, SC, beginning on October 30th and he did not report to work from October 30, 2012 through November 9, 2012, the date of the charge letter.

As stated above the record reveals that the Claimant did not report to Dillon, SC, on October 25th and the Claimant did not inform his immediate Supervisor that he would not report to work and did not report to work on that date (See Transcript pages 5, 18 and 23). Claimant admitted he made no arrangements to work on October 29th, his next scheduled work day and despite instructions by the Carrier to report to Florence on October 30th, the Claimant admitted he did not inform the Carrier that he would not report to work and did not report to any point leading up to his charge letter (See Transcript pages 5, 18, 23, 26 and 27).

In his defense the Claimant testified on pages 32 and 33 of the transcript that he would have reported for work if the Carrier had provided prompt reimbursement of expenses incurred prior to his returning to work. The record reveals that the Claimant never advised the Carrier of his alleged predicament and that he could not report to work until his expenses were reimbursed prior to the formal Investigation. Additionally, the testimony substantiated that because of the Claimant's own procrastination and his incorrect filing of expense reports the time period for reimbursement of his expenses was protracted, all of which was due to Claimant's mistakes or inaction.

Claimant also suggested that his failure to report to work was attributable to being emotionally overwhelmed account of the personal problems that he was facing and he was working with the Employee Assistance Program to correct those problems. On page 35 of transcript the Claimant was questioned as follows:

"Murphy: ...Mr. Meekins, the counseling that you have arranged outside of CSX what's that, what does that have to do with you not reporting to work?"

Meekins: It doesn't have anything really to do with me not reporting for work...." (*Underlining Board's emphasis*)

Claimant's latter defense was defeated by his own testimony, therefore, his only substantive defense was that he was short on monies and could not report to his assignment because of the lack of funds allegedly attributable to the Carrier's failure to pay his expenses in a timely manner. Review of the transcript shows that assertion to be less than candid. On page 35 the questioning of the Claimant continued as follows:

"Murphy: Mr. Meekins, you talked about being out of work for 35 days with no pay. Was that a result of a charge letter previous to this investigation?"

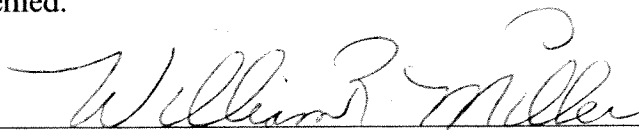
Meekins: Yes." (*Underlining Board's emphasis*)

It was not refuted that the Claimant signed a waiver for failure to protect his assignment prior to the instant dispute that resulted in him being off for 35 days, therefore, his lack of funds was again due to the Claimant's action and was not the result of anything done improperly by the Carrier. It is determined that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately four years of service. During his short tenure Claimant had two prior offenses for failure to protect his assignment. In the instant case, the Claimant failed to protect his assignment beginning the very first day back from a prior suspension for similar charges. The Board finds and holds there is no reason for mitigating the discipline as it was not arbitrary, excessive or capricious and was in accordance with the Carrier's Progressive Discipline Policy. The discipline will not be set aside and the appeal/claim is denied.

AWARD

Appeal denied.



William R. Miller, Referee

Dated: May 20, 2013