

PUBLIC LAW BOARD NO. 7120

(BROTHERHOOD OF MAINTENANCE OF WAY
PARTIES TO DISPUTE: (EMPLOYES DIVISION
(
(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated April 15, 2010, N. A. Weber, Manager Work Equipment, instructed F. M. Duhamel ("the Claimant") to attend a formal Investigation at the Wyndham Garden Hotel in Richmond, Virginia, on April 22, 2010, "to determine the facts and place your responsibility, if any, in connection with information that I received on Monday, April 5, 2010 from Mr. W. Batista, of Mulholland Investigations, in connection with a series of reports that he issued between March 1, 2010 and March 29, 2010 regarding allegations of suspicious activity that you may have engaged in between February 21, 2010 and March 26, 2010, while you were assigned to a Roadway Mechanic position on Force 5X3T which supported System Production Team 5XT3." The letter enumerated specific examples of alleged dishonest acts:

Friday, February 26, 2010 you reported on your time sheet that you worked until 4:00 P.M. when you actually left the Carrier provided lodging facility for your trip home at approximately 11:42 A.M.

On Friday, February 26, 2010 you signed an expense reimbursement form claiming mileage from your residence in Midlothian, VA., to the carrier provided lodging facility in Monroe, NC, on Monday, February 22, 2010 for 340 miles in the amount of \$170.00, and from Monroe, NC, to your residence in Midlothian, VA, on Friday, February 26, 2010, again for 340 miles in the amount of \$170.00. It appears that these expenses were not incurred by you as you did not drive your personal automobile because you were a passenger in the personal vehicle that was being driven by Mr. S. A. Roberts, ID# 179261.

Also, on Friday, March 12, 2010 you signed an expense reimbursement form claiming mileage from your residence in Midlothian, VA, to the carrier provided lodging facility in Laurinburg, NC, on Monday, March 22, 2010 for 320 miles in the amount of \$160.00; and from Laurinburg, NC, to your residence in Midlothian,

VA, on Friday, March 12, 2010 also for 320 miles in the amount of \$160.00. It appears that these expenses were not incurred by you as you did not drive your personal automobile because you were again a passenger in the personal vehicle that was being driven by Mr. S. A. Roberts, ID# 179261.

In addition to the above, a review of the fuel purchases associated with Work Equipment vehicles that you had access to, coupled with the above reports from Mulholland Investigations, indicate that on March 5, 2010 and March 25, 2010 you purchased fuel for your personal vehicle in the amounts of \$35.00 and \$42.00, respectively, using the fuel card assigned to CSXT Vehicle 96192.

The Claimant was removed from service pending the results of the Investigation.

The letter asserted that in connection with the foregoing incidents the Claimant was “charged with conduct unbecoming an employee of CSX Transportation, falsification of payroll documents, submitting fraudulent expense reimbursement forms, theft, the unauthorized use of a CSX purchase card, as well as possible violations of, but not limited to, CSX Transportation Operating Rules - General Rule A, General Regulation GR-2, GR-3, GR-3A and GR-15; as well as, the CSX Code of Ethics.” The scheduled hearing was postponed for medical reasons involving the Claimant and rescheduled to September 1, 2011. Thereafter because of hurricane damage the hearing was again postponed and rescheduled to September 29, 2011.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant began his employment with the Carrier on September 20, 1993. The last five or six years of his employment he held the position of System Mechanic T3. The Carrier received an anonymous tip that the Claimant and another employee were involved in some suspicious activity. A private investigation firm, Mulholland Investigations, was hired to observe the Claimant and the other employee. Manager Work Equipment N. A. Weber testified that the investigation revealed that between February 21, 2010, and March 26, 2010, the Claimant was fueling his personal vehicle with his CSX vehicle credit card; was leaving work early and claiming time for his full shift; and he was car pooling with another employee but claiming mileage reimbursement as if he had used his own vehicle.

Manager Weber identified investigation reports and videos submitted to the Carrier from Mulholland Investigation that provided evidence of each of the alleged incidents of dishonesty listed in the April 15, 2010, charge letter and reproduced above at pages 1-2. These included claiming time on his time sheet for hours not worked; claiming mileage on two separate occasions for use of his personal vehicle to travel from the work site to his residence, and from his residence to the work site, although he rode as a passenger in another employee's vehicle; and purchasing fuel on two occasions for his personal vehicle while using a CSX fuel card assigned to a CSX vehicle.

The Claimant was questioned at the hearing by the conducting officer regarding each of the incidents listed in the charge letter. He did not deny that each of the incidents occurred as described in the charge letter, but, except for the fuel purchases, provided an explanation for his conduct that he believed showed that he did not have a dishonest intent. He admitted making the two fuel purchases for his personal vehicle with a CSX

fuel credit card and offered to make reimbursement. He described the purchases as “a very bad decision.”

The Claimant admitted that he left work early on February 26, 2010, and claimed time on his payroll until 4:00 p.m. that day. He defended his action on the basis that there was an agreement “between managers and employees” that if the day before the equipment was loaded on flat cars early for transportation to the next work site, then he and the other mechanic were “allowed to leave the same time the next day.” Asked by the conducting officer which supervisors he had the agreement with, the Claimant stated, “Well, it was an agreement between Nick Weber and us . . . way back when he had said if they load early and the other mechanics slide out early, then we could slide out early later on at a later date, I mean the following day when we were off.”

The Claimant testified that the tie force loaded early the previous day, on Thursday, the last day of their four-day workweek. The Claimant’s workweek was Tuesday to Friday. The Claimant acknowledged that he and the other mechanic, Mr. Roberts, did not tell Manager Weber that they were leaving early.

Regarding the claiming of mileage reimbursement when he did not use his own vehicle, the Claimant testified that when he drove with mechanic Roberts, “I would drive with him and I would drive his car and then we would take turns driving and I would pay for gas and he, we’d, split the gas and stuff with him.” The Claimant stated that he was not aware of the provision in the System Mechanic Agreement stating that one had to use his personal vehicle to claim mileage reimbursement. “[I]f somebody had told me I couldn’t ride together and claim mileage I would have never . . . done it,” the Claimant testified.

In response to questions by the Organization representative, the Claimant testified

that on Friday, February 26th they were given tasks to do by Mr. Weber. They completed the tasks earlier than expected, the Claimant stated, “so we just locked up all the trucks and I didn’t see any sense in sitting in the hotel another four or five hours so I just went home.” The Claimant explained that as a System Mechanic T3, he repairs all the heavy equipment for the tie force. That gang, he stated, has approximately 45 or 50 pieces of machinery assigned to it. They normally load their equipment on railroad flat cars on Thursday, the Claimant testified. On Thursday, February 25th, according to the Claimant, they finished loading at 2:30 p.m., and he and mechanic Roberts kept working until about 6:00. When the equipment was loaded on Thursday, the Claimant testified, “the men were released to go home and the other five mechanics headed to the hotel to go home.” They do not normally do any type of repairs on equipment, the Claimant stated, once it is loaded onto trains for transportation.

Concerning the charge that he improperly claimed mileage reimbursement, the Claimant testified that the manager knew that he and Mr. Roberts were traveling together. Several times, according to the Claimant, he and Mr. Roberts traveled together to tram equipment for the company’s benefit. “[N]obody ever said anything about it,” the Claimant testified, “so I thought it was okay, traveling together and both claiming our mileage.”

The Claimant testified that other employees also rode together, and he thought that it was an acceptable, safe practice. He presented an email dated April 20, 2010, from a road mechanic who has worked for Manager Weber since October, 2004, for both T-3 and T-4 tie forces. That mechanic stated that at no time was he “ever told by Mr. Weber or any other CSX officer that I could not travel with another Mechanic and claim mileage expenses.” Nor, he wrote, had he ever “received from the company or the Machinist

Union any paperwork or rule that states no Mechanics can ride together and claim mileage expenses.” The road mechanic further stated in the email, “If I had been aware of this rule on claiming mileage expenses and not being able to ride together I would not have violated it. Mr. Weber has been approving our mileage expenses for the years we have been working for him, and Mr. Weber was aware that we rode together at times. Mr. Weber should have told Mike Duhamel or myself of this rule if we were in violation.”

An undated statement by a second employee said that he, to his knowledge, has “never been told that you could not ride with another coworker and claim mileage expenses.” A third employee wrote in a To whom it may concern” letter dated April 17, 2010, that he has been employed by CSX for ten years as a roadway mechanic “exclusively on jobs that include mileage reimbursement.” He has worked on both rail gangs and tie teams, he stated, and was never “told by any member of management not to ride with another employee of CSX.” The letter continued:

I have never seen such a rule or implication of practice in any policy, printed or otherwise from management. I know of no precedent that would indicate to me that the practice of car pooling with other employees is prohibited. In fact, this practice is widely engaged in by members of the maintenance of way department, though they receive travel allowance.

* * *

The practice of disciplinary action for unwritten or possibly imagined policies goes against the core values of CSX. . . .

The Claimant also introduced into evidence a statement dated September 29, 2011, from a roadway mechanic who asserted that in a safety certification meeting of roadway

mechanics in January, 2011, a Mr. Ricky Johnson spoke up and “stated that any Roadway mechanic caught riding together traveling would be terminated.” The roadway mechanic stated, “That was the first time I had heard that from any management.”

In response to a question from the Organization representative whether he admitted misusing the company credit card, the Claimant stated, “Yes it was stupid and shouldn’t have been done.” Asked the circumstances behind his using it, the Claimant testified, “Well to be honest, I was broke. I have a lot of debt that led up to that and I just didn’t have a way home and I have a letter that I am prepared to read later on about my situation.”

The conducting officer recalled Manager Weber and asked him, “Mr. Weber is there any verbal or non-verbal agreement between supervisors and employees about Mechanics going home early.” He answered “No.” He was then asked, “For example if the team the Mechanics were working for were to have loaded and completed that project for the week, are employees allowed to leave early and submit time sheets for a full day?” He answered “No.”

The conducting officer asked Mr. Weber, “If a team does load where the team is leaving their current project and the equipment is being loaded on flat cars as described . . . earlier, is there an expectation or is there any activities Mechanics would do after the equipment is loaded on the cars?” He answered that they could use the time to do work on the trucks or to repair components such as spike drive components or axle assemblies. They can also work in the parts trailer, he stated. A lot of the work that is done by mechanics, Mr. Weber testified, is self-directed.

In response to questioning from the Claimant, Mr. Weber acknowledged that he once asked the Claimant and mechanic Roberts to follow a Cat stabilizer to Richmond,

one of them in his personal car and the other in a CSX truck, so that the operator would be able to drive himself back. Mr. Weber answered that he “wouldn’t have taken any exception to you guys riding together.”

In answer to questions from the Organization representative, Mr. Weber acknowledged that SPT employees on the tie gang have been sent home once they have loaded the equipment. With regard to whether they were paid for the rest of the day, he testified that he does not input their time and that he did not know. With regard to the mechanics on the tie force, Mr. Weber testified, “I’ve seen guys stop their time . . . at whatever time they leave and go home, yeah.” Asked by the Organization representative if it was his testimony that they have never been paid for the rest of the day once they have completed their assignment, he stated, “I can’t say for every Mechanic everywhere, I don’t know.”

In a closing statement in his own behalf, Claimant Duhamel read the following letter from himself to CSX Transportation into the record:

September 27, 2011

To: CSX Transportation

Dear Sir/Madam:

Around February thru March of 2010 I made several mistakes that led to CSX Transportation pulling me out of service. I called the Employee Assistance hotline and told them I needed help with just a lot of problems. I talked with my doctor about my debt problems, family problems, gambling problems and panic attacks which led up to the theft at work. I was to[o] embar[r]assed to ask for help. I borrowed money from the gang members to help out, but always paid it back. With regard to the theft of travel money, I thought BMW employees could travel

together as I see the gang members doing this a lot. If my supervisor had told me this is not an acceptable practice I would not have done this. This whole situation has impacted me with having to return two vehicles to the bank, the loss of a considerable amount of money and benefits and having to sell my home. I also lost the trust of friends and management at CSX. I would like you to consider my doctor's evaluation. If CSX will let me return to work I can promise you I will be a model employee at CSX in the future. I have close to 17 years of service and would like a second chance.

Thank you for your consideration.

Sincerely,

Francis Duhamel 320819

/s/ Francis Duhamel

Claimant Duhamel also introduced into evidence a letter from Aaron Mekhoubat, PhD, a licensed professional counselor and licensed marriage and family therapist, from whom he had been receiving counseling. The letter stated as follows:

To: Whom It May concern

Re: Mr. Francis Duhamel

Dear Sir/Madam

Mr. Duhamel was first evaluated on April 16, 2010 for his appropriateness to participate in outpatient psychotherapy to manage anxiety disorder and impulsive behaviors. He was able to disclose information regarding his decision making process, stress management skills, and self regulation and management in difficult situations. He discussed his work related behaviors, and related strengths and shortcomings.

Mr. Duhamel completed every phase of his treatment and his progress was satisfactory. He was punctual and his involvement in treatment process was appropriate. He learned to cope better with his anxiety, to communicate effectively with others, and focus on the consequences of his decisions.

Thank you for your attention regarding this matter.

Aaron Mekhoubat, PhD

/s/ Aaron Mekhoubat

In a closing statement in the Claimant's behalf the Organization reiterated its position that it was entitled to be provided before the hearing with the exhibits that the Carrier intended to rely on during the hearing in support of its case. Especially in a case of this kind, the Organization argued, it was reasonable to make available the exhibits beforehand.

On the merits, the Organization contends that the Claimant "gave reasonable responses in regards to the expense report, mileage that he was turning in. The policy of leaving earlier and getting paid." The Organization acknowledges that the Claimant did not have a good explanation for the gas purchases for his private vehicle on CSX's fuel card. It notes, however, that the Claimant did offer to make restitution and, in fact, gave a check to the Carrier at the hearing in the amount of \$77. In addition, the Organization asserts that the other System Mechanic T3 with whom the Claimant worked and who was under surveillance at the same as the Claimant, Mr. Roberts, was reinstated to employment although charged with similar offenses as the Claimant.

The conducting officer challenged the Organization's assertion regarding Mr. Roberts and asked if the Organization had any charge letter or exhibits with regard to Mr.

Roberts. The Organization did not produce any documentation to support its oral assertion. Nor, as the conducting officer pointed out, was there any testimony given with regard to charges against Mr. Roberts.

Following the close of hearing, by letter dated October 19, 2011, the Assistant Chief Engineer notified the Claimant of the Carrier's determination, after a review of the transcript and exhibits, that the hearing was conducted in accordance with his due process rights and that all objections were properly addressed by the conducting officer during the hearing. The letter also stated that his review of the transcript confirmed that the charges placed against the Claimant were valid and proven and that the evidence established that he was "guilty as charged" and was "in violation of the cited CSX Transportation Operating Rules and Regulations." "Therefore," the letter stated, "based upon my finding of guilt, the seriousness of the offenses, a review of your personnel file, and your continued disregard for the basic tenant [sic tenet?] of the employee/employer relationship, it is my decision that the discipline to be assessed is your immediate dismissal in all capacities from CSX Transportation."

In its written post-hearing submission the Carrier asserts that all of the Claimant's due process rights as provided in the collective bargaining agreement were fully protected and the hearing conducted in a fair and impartial manner. Regarding the Organization claim that Claimant's due process rights were violated by the Carrier's failure to provide him with its hearing exhibits prior to the hearing, the Carrier argues that it has no obligation, contractual or otherwise, to provide such documents in advance of the hearing.

Regarding the substantive case, the Carrier argues that it provided substantial evidence that the Claimant used a company fuel card to purchase fuel for his personal vehicle. In addition, the Carrier notes, the claimant admitted that he used the fuel card for

his personal vehicle without permission. It has also proved, the Carrier contends, that the Claimant acted dishonestly by leaving work at 11:42 a.m. and reporting an off-duty time of 4:00 p.m. Regarding the Claimant's contention that he had an agreement with his manager that he could leave work early and claim time for hours not worked in certain situations, the Carrier asserts that the manager testified that there was no such agreement and that the conducting officer credited the manager's testimony. The credibility determination should not be disturbed, the Carrier argues. Regarding the Claimant's submission of mileage reimbursement requests on four occasions for trips made while a passenger in another employee's vehicle, the Carrier contends that the Claimant's defense that he believed that it was permissible to do so "is severely weakened by the Claimant's own expense reports, where he states he drove his personal vehicle."

The dismissal of the Claimant was appropriate and fully justified, the Carrier asserts. It notes that under the Carrier's Individual Development & Personal Accountability Policy theft and dishonesty are Major Offenses for which an employee may be dismissed for a single occurrence. Further, the Carrier points out, dismissal has often been found to be an appropriate penalty for dishonest conduct. Therefore, the Carrier maintains, dismissal was an appropriate penalty in this case and not excessive.

The Carrier also contends that the Claimant's work history justifies the dismissal penalty and a more severe penalty than was ordered by the Board in Mr. Roberts's case. It asserts in its written submission, "In 2001, the Claimant received a 4.5 day suspension for conduct unbecoming In 2006, the Claimant signed a waiver admitting to falsification of payroll documents, dishonesty and theft, and received a time-served . . . suspension" Regarding Mr. Roberts's case, the Carrier asserts that the two employees were not similarly situated because Mr. Roberts did not use a company fuel

card to fuel his own vehicle and did not have discipline on his record for similar conduct. The Carrier requests that the claim be denied.

In its post-hearing submission, the Organization argues that the record “reveals the Claimant exhibited no intent to deceive or defraud the Carrier in connection with the charges leveled against him.” The Claimant, the Organization asserts, believed that it was permissible to leave work early and charge time in the manner he did. Although his supervisor did not confirm that such a practice existed, the Organization maintains, “he never definitively refuted the practice.” The evidence, moreover, shows, the Organization contends, that it was the practice to charge mileage for weekend trips home even when sharing a ride with another employee.

Concerning the Claimant’s use of the company fuel card to purchase gasoline for his private vehicle, the Organization argues that the Claimant’s “judgement was clouded by his mental state.” The Organization notes that the Claimant sought professional help for his condition and responded positively to his treatment as his counselor stated in his letter presented at the hearing. The Organization urges that “[t]he Claimant took the corrective measures necessary to rehabilitate himself by entering a treatment program and deserves a chance to once again prove himself as a valued employee.” It cites NRAB awards which have supported giving important weight to an employee’s rehabilitative efforts as an adjunct of a disciplinary program.

With respect to the Organization’s procedural argument, the Board has held in several cases that the Carrier is not required to provide the Organization, prior to the hearing, with copies of the documents the Carrier intends to rely on in presenting its case against the claimant. See PLB No. 7120, Awards Nos. 3 and 27; PLB No. 7008, Awards Nos. 16 and 25. The Carrier’s refusal to provide such documentation to the Organization

in this case is not a basis for overturning the disciplinary action imposed by the Carrier.

If the employee had been charged with one instance of leaving work early at the end of the week and claiming mileage for use of a personal vehicle while car pooling with another employee, this Board would be persuaded to follow the result in Public Law Board No. 7448, Award No. 2, involving Mr. Roberts, the other mechanic who was under surveillance at the same time as the Claimant. In that case, in reversing the dismissal, the Board relied on the fact that when the case was discussed on the property, the Carrier did not rebut the organization's argument that the Claimant was doing what other mechanics on the system were doing. Mr. Roberts was charged with claiming mileage reimbursement to which he was not entitled and with falsifying his time sheet, the same as the Claimant in this case.

Similarly, in the present case, the Carrier did not rebut the Organization's evidence indicating that it was a common practice as of April, 2010, when the Claimant was charged, for employees to ride together and submit individual mileage reimbursement claims. The practice seems to have been too widespread for management not to be aware of it. Significantly when Manager Weber was recalled to testify he was asked whether mechanics are permitted to ride together in one vehicle and each one claim individual mileage. He answered "No." He was thus asked about what was permissible as of the day of the hearing in September, 2011. However, he was not asked whether in February, March, and April, 2010, it was a practice for mechanics to ride together and claim individual mileage expense. That evidence remains unchallenged in the record. In addition, according to the Organization's evidence, sometime after April, 2010, the Carrier began enforcing a policy of not permitting employees to claim individual mileage while traveling together with another employee.

What distinguishes this case from Mr. Roberts's situation are 1) the fact that on two known occasions the Claimant used a company fuel credit card to purchase fuel for his own vehicle; and (2) he was previously charged with falsification of payroll records, dishonesty, and theft and signed a waiver in connection with the charges. Mr. Roberts was not charged with fuel card misuse. In addition, in concluding that the claimant Roberts must be returned to service, besides the on-property argument, the Board specifically relied on "the fact that the Claimant (with the exception of this charge) has a good employment record."

In a very recent case this Board upheld the discharge of an employee with four years of service for a single use of a company fuel credit card to purchase fuel for his private vehicle. PLB No. 7120, Award No. 103. In our opinion we noted that we had reviewed other cases involving unauthorized use of a fuel card to fuel one's private vehicle, and we remarked as follows:

The Board has reviewed prior awards involving unauthorized use of a carrier credit card to purchase fuel for one's private use. Such an offense is generally treated quite severely by the Board. There are reported cases involving long-term employees who have been given a second chance where a single unauthorized purchase was involved. There are also cases where there were strong extenuating circumstances to permit a conclusion that the claimant did not have a dishonest intent and where dismissal was therefore not imposed. But where the foregoing circumstances were not present, dismissal has been the rule. See, for example, Public Law Board No. 5850, Award No. 45, (dismissal upheld for a single purchase of fuel for private vehicle using carrier credit card), Third Division Award No. 25845 (dismissal upheld for two purchases of gasoline totaling \$40.96

for private vehicle with carrier credit card), Public Law Board No. 7048, Award No. 22, (dismissal upheld for unauthorized gas purchases amounting to approximately \$100, number of transactions not disclosed).

In the present case the evidence shows that the Claimant used a company fuel credit card without permission or authorization to purchase fuel for his private vehicle without intending to reimburse the Carrier for the fuel purchased charged to the Carrier. He did so on two separate occasions. Although the Claimant has 17 years of service to his credit, his service is marred by a previous offense of falsification of a payroll record in order to claim payment for the workday of March 3, 2006, on which he was absent from work.

In connection with that incident the Claimant was charged on March 15, 2006, “with conduct unbecoming an employee of CSX Transportation, . . . falsification of payroll documents, dishonesty and theft.” The Claimant, by his Organization, at that time requested to be given an opportunity to waive his rights in connection with the charges against him. By letter to the Organization representative dated March 20, 2006, the Carrier agreed to permit the waiver, but included the following stipulation:

In addition to the above, it is clearly understood that if Mr. Duhamel is proven guilty of any similar violations in the future, such violation could result in his immediate dismissal from service. Further, it is understood that Mr. Duhamel will be required to comply with the Carrier’s Policies, Rules and Instructions regarding protection of his work assignments.

If you are agreeable to the conditions as stated above please arrange to have the appropriate signatures affixed below, returning one copy to this office for our files.

Both the Claimant and the Organization representative signed the waiver. The Claimant

was thus expressly warned that any similar violation in the future could result in his immediate dismissal from service. Despite this specific warning, the Claimant thereafter committed theft on two separate occasions with the fuel purchases for his private vehicle.

In oral argument in this case, the Carrier representative referred to the Claimant's prior offense involving dishonesty and stated that CSX fears that if reinstated he would once again act dishonestly as he did repeatedly in this case following the signing of a waiver in a falsification of payroll proceeding. The Board cannot state that the Carrier's fears are unjustified. It will not disturb the Carrier's dismissal action.

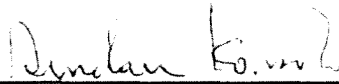
The Board has paid careful attention to the evidence presented by Claimant regarding his efforts at rehabilitation through counseling and therapy. The letter from the Claimant's counselor-therapist stating that Mr. Duhamel completed every phase of his treatment and that his progress was satisfactory is encouraging. It is, however, not a sufficient basis for this Board to overturn the discipline assessed by the Carrier in view of the seriousness of the violations involved and the Claimant's past offense involving dishonesty. Perhaps the Organization can persuade the Carrier to exercise leniency in view of the Claimant's long service and his efforts at rehabilitation. Perhaps further communication with the therapist could convince the Carrier that the Claimant is a good risk and will, in fact, if reinstated, become a model employee as promised in his letter to CSX Transportation. That, however, is a gesture that the Carrier would have to make and is beyond the reasonable discretion of this Board on the facts of this case.

A W A R D

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

A handwritten signature in cursive script, appearing to read "Sinclair Kossoff", is written above a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
March 9, 2012