

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated January 19, 2011, Assistant Roadmaster S. B. Moncur notified A. F. Torres (“the Claimant”) to attend a formal hearing at the Division Engineer office in Selkirk, New York, on February 1, 2001. The purpose of the hearing, he was informed, was “to determine the facts and place your responsibility, if any, in connection with information received on January 6, 2011, in the vicinity of Oak Point Yard, Bronx, New York, when it was reported that you allegedly falsified your payroll when you claimed eight (8) hours worked on Monday, January 3, 2011 when you had marked off and did not work that day.” The letter stated that in connection with the incident he was “charged with dishonesty, falsification of payroll, and possible violations of, but not limited to, CSXT Operating Rules – General Regulations GR-2 items 4 and 7, GR-15 and General Rule A.” It noted that the Claimant had been removed from service pending the outcome of the hearing. Because of an expected snow storm the hearing was rescheduled to February 10 , 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, Alex F. Torres, is a Track Foreman, with a service date of June 27, 2005. Walter L. Cole, Jr., Engineer of Track on the Albany Division, who has 35 years of service with the Carrier, approves the payrolls for employees who work under him. To assure on-time payment to employees for work performed the preceding week, payrolls must be approved by 5:00 p.m. on Thursdays. On the afternoon of Thursday, January 6, 2011, Mr. Cole was looking over the various payrolls that he had to approve for the workweek ending Tuesday, January 4, 2011. He saw that the Claimant, who is a foreman, had submitted, by computer input, a Report Engineering Payroll that authorized payment to him (the Claimant) for 8 hours on Monday, January 3, 2011.

Mr. Cole remembered that Mr. Torres had not been at work on January 3rd. Mr. Cole had spoken to Assistant Roadmaster Moncur on the morning of January 3rd about a broken rail at the Oak Point link that had to be repaired, and Mr. Moncur said that he had to go down there to get the track in order because Mr. Torres did not come to work that day. Mr. Cole called Mr. Moncur on January 6th and asked him if he had inputted the 8 hours on the payroll for Mr. Torres for January 3rd. Mr. Moncur said that he had not done so, that Mr. Torres had inputted the payroll. Mr. Moncur said that he was not aware that Mr. Torres had paid himself for the day. Mr. Cole changed the payroll report to show that Mr. Torres was WTP for January 3rd, which meant "absent without permission."

Mr. Cole testified that he considered Mr. Torres's conduct dishonest in that he did not show up for work on January 3rd, but elected to pay himself for the day. His actions, Mr. Cole stated, also amounted to falsification of the payroll and were in violation of

General Rules A and General Regulations GR-2, items 4 and 7; GR-3, item 2, and GR-15.

Seth Moncur, Assistant Roadmaster, has three and a half years' service with the Carrier. He testified that on Thursday, January 6, 2011, Mr. Cole called him and asked why there was an input on the payroll for Mr. Torres for Monday, January 3rd, when he knew that Mr. Torres was off work that day. Mr. Moncur told him that he did not know but that he would call Mr. Torres. Mr. Moncur called Mr. Torres and asked him why he put payment for himself on the payroll for Monday when he was not at work.

They could not talk at the time, Mr. Moncur testified, but later he got a text message from Mr. Torres that said as follows: "I put myself in for Monday so I wouldn't lose my vacation and I'm gonna mark another day as off." Mr. Moncur received the message on his cell phone at 2:07 p.m. Thursday, January 6. Mr. Moncur testified that on January 3, 2011, Mr. Torres called in and said that he would not be at work that day. Mr. Moncur could not remember if the reason given was that Mr. Torres was sick or that someone in his family was sick. Mr. Moncur expressed the opinion that by paying himself for Monday, January 3rd, when he did not perform work, Mr. Torres was dishonest and falsified the payroll.

The Claimant, Alex F. Torres, Track Foreman, testified that he has five years of service with the Carrier. He inputted the payroll for the week ending January 4, 2011, he stated, but he did not knowingly pay himself eight hours' straight time for January 3, 2011. The way the payroll report works, he explained, is that hours are automatically inputted for each day, and it is your responsibility to remove any days or hours not worked or for which payment is not to be made. Not knowingly, he stated, the hours were left on for January 3rd. He did not work on January 3, 2011, he testified.

Mr. Torres was shown a copy of the text message purportedly received from him

by Mr. Moncur on January 6th and asked whether he sent the message to Mr. Moncur. He answered, "I do not recall sending this type message to him." He testified that he recalled a brief conversation with Mr. Moncur in regards to Mr. Cole being upset because he saw that time had been entered for Mr. Torres for Monday, January 3rd. Questioned by the conducting officer what he said to Mr. Moncur, Mr. Torres stated, "I remember being nervous because . . . I had realized after the fact of the mistake I made and I didn't inform anybody. I was nervous and I didn't know what to say, and then I honestly can't recall. I remember him telling us to call Mr. Cole, and then after that one I cleared the track I called Mr. Cole and I spoke to him over the phone."

Mr. Torres stated that in his conversation with Mr. Cole he told him that it was a mistake, that he forgot to remove the payment for January 3rd "because of the commotion for putting myself, my time in and the time of the others, because the other employees that I work with weren't around, so I had to get their time to make sure that I didn't miss any time for them, and between all that and having took off . . . work I had mistakenly forgotten to remove my time."

After the day was over, Mr. Torres testified, he realized that he forgot to take off the time, and the following day before he was able to speak to anybody Mr. Moncur questioned him. That's when he spoke to Mr. Cole, Mr. Torres stated, and Mr. Cole asked him if he did it, and he told him it was done accidentally. Mr. Cole, according to Mr. Torres, said that "it was a rules violation for putting myself in and I should have said something to somebody right when it happened."

Because of the Claimant's testimony that he did not recall sending the text message to Mr. Moncur, the conducting officer recalled Mr. Moncur to the hearing room and had him show the text message saved on his (Mr. Moncur's) phone to Mr. Torres.

Mr. Torres acknowledged that the text message showed that it came from a telephone that had Mr. Torres's phone number and appeared to come from Mr. Torres's phone.

Questioned by the hearing officer, Mr. Moncur agreed with the prior testimony of the Claimant that when you pull up an employee's name to input payroll in the system, the hours worked are already entered, and, if there are any changes to be made, you have to make the changes. For example, he stated, when Mr. Torres did the payroll, the eight hours' straight time would have been in the system automatically, and it would have been his responsibility to change it by putting in a different pay code.

Mr. Moncur testified that he has made corrections to the payroll report. They were mostly situations, he stated, where the wrong expense rate was put in for timber gangs, and he made corrections for the employees.

Mr. Cole was recalled to testify by the conducting officer and was asked whether he had had a conversation with Mr. Torres about the wrong payroll entry. He stated that either on January 6th or 7th he had a conversation with Mr. Torres in which he (Mr. Cole) said, "Are you aware that you put the time in and that's a falsification of records?" Mr. Torres replied, Mr. Cole testified, "yes, that he had put the time in and he was unaware that, he didn't know how to put the time in, he wanted to get paid for the holidays." He told Mr. Torres, Mr. Cole stated, that he was in direct violation of the company policies. Mr. Torres never told him that it was a mistake, Mr. Cole testified.

The conducting officer asked Mr. Torres if he was dishonest. He answered, "I don't feel that I was dishonest." He did not knowingly falsify the payroll, Mr. Torres stated. He added the following statement:

It was an accident, due to the commotion of putting all of the other, my payroll as well as everyone else's and due to the fact that everyone was not around when

payroll was put in, nor was there a time sheet stating, you know, who had what hours, who was off, who had any overtime. I had to take it upon myself to go and find other employees and question them and to, you know, if they had any hours, whether there was any overtime, did they miss any time. And then I had to go back and input all their time, you know, as well as my own. And I, like I said, I accidentally in scrolling down, you know, left, I did not remove the eight hours from January 3rd from my name and then once I put in the other employees payrolls, and once everything is put in it's entered, and then it's up to Mr. Cole to review it and remove any other time that, you know, review the time that was put in.

Mr. Torres denied that he violated the rules that he was charged with violating.

In a closing statement on behalf of the Claimant, the Organization asserted that "it would seem to be clear and very possible that there was no attempt to be dishonest or falsify the payroll as the payroll automatically inputs the eight hours, was inadvertently overlooked by Mr. Torres." The purpose of the review process that the Carrier does, the Organization argues, is to catch mistakes and make sure that they are properly corrected. In the present case, the Organization asserts, the mistake was caught and Mr. Torres never received any pay for the time. There was no direct evidence, the Organization contends, that the Claimant acted maliciously or deliberately tried to manipulate the payroll. The Organization argues that the Claimant made an inadvertent mistake of the kind the supervisor admitted does occur and that must be corrected.

Following the close of the hearing, by letter dated March 2, 2011, the Division Engineer for the MW Albany Division notified the Claimant of the Carrier's determination that there was sufficient proof presented at the hearing to demonstrate that

he was guilty as charged and in violation of the cited CSX Transportation Operating Rules and Regulations. The letter stated that it was the Division Engineer's decision that because all charges against the Claimant were proven, the discipline assessed was his "immediate dismissal in all capacities from CSX Transportation."

The Board has reviewed many published decisions in which employees have been charged with falsification of the payroll. In the great majority of cases the penalty of discharge has been assessed by the carrier and, where supported by substantial evidence, upheld by the Board. In a small number of cases the penalty assessed by the carrier has been reversed by the Board where the evidence supported a finding that the accused employee was not intentionally attempting to falsify his payroll. See, for example, Third Division Award 30805 (1995) (dismissal of a 19-year employee reversed because Board "not persuaded that Claimant was intentionally attempting to falsify his payroll") and Third Division Award No. 25989 (1986) (20 day suspension reversed because of Board's finding that employee made an honest mistake). There are also cases where the carrier exercised leniency. See, for example, Fourth Division Award No. 4595 (carrier restored claimant to service on a leniency basis after first dismissing him from service for falsification of payroll following a formal hearing).

In the present case, so far as the Claimant's record that was made available to this Board shows, this was the first offense on the part of the Claimant in five and a half years of service. However, the evidence does not show that the Claimant made a mistake regarding his payroll report. His own text message to his supervisor, when he was asked for an explanation for why he claimed payment for Monday, January 3, 2011, when he did not work that day, stated, "I put myself in for Monday so I wouldn't lose my vacation and I'm gonna mark another day as off."

The text message is an admission that the Claimant acted intentionally so as not to lose his holiday pay, referred to as "vacation" in the text message. Similarly he told Engineer of Track Cole that he wanted to get paid for the holidays. An employee is supposed to put in his time as actually worked. If his true hours worked do not entitle him to holiday pay, the employee must accept that fact. He may not manipulate his hours to receive pay to which he is not entitled.

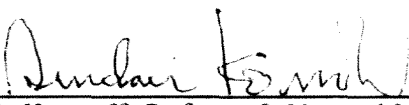
The Board believes that it has no legitimate discretion on the facts of this case to overturn the Carrier's disciplinary action. The Claimant did act dishonestly by knowingly submitting a payroll record that claimed payment for hours not worked so that he could receive holiday pay. That constitutes intentional falsification of a payroll record, and is grounds for dismissal. If the Carrier wishes to exercise leniency on the basis that Mr. Torres has a good past record and did not mean to be dishonest but was merely trying to protect his holiday pay, it is a decision that the Carrier will have to make.

A W A R D

Claim denied.

O R D E R

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



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
June 10, 2011