

NATIONAL MEDIATION BOARD
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 91
Employee: T. S. Manning

Neutral Member: Barbara Zausner
Carrier Member: Robert A. Paszta
Organization Member: Timothy W. Kreke

STATEMENT OF CLAIM

- 1- The thirty day suspension imposed upon Machine Operator T. S. Manning for violation of CSX Transportation Operating Rule – General Rule A as well as General Regulations GR-1; GR-2; and, GR-15 in connection with allegedly submitting false payroll records regarding time spent on jury duty is based on unproven charges, unjust, unwarranted and in violation of the Agreement. (Carrier's File 2008-029658).
- 2- As a consequence of the violation referenced in Part 1 above, Mr. Manning shall be compensated for all earning opportunities and other benefits deprived him, including investigation attendance and that his record be cleared of the charges and results therefrom.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Claimant was charged with conduct unbecoming an employee of CSX, failure to follow instructions, being absent from work without proper permission or authority, falsifying payroll, and dishonesty. Specifically, he failed to document that he physically participated in jury duty for all the time he claimed. The Carrier relied on evidence that the Claimant was released from jury duty on the first day with instructions to call in the following day. He claimed jury duty pay for the week. He was absent without permission on Tuesday, Wednesday and Thursday of the week in question.

The Carrier claims the Claimant was told on Monday that he would not be needed at court on Tuesday and should go to work that day. On Wednesday, the Claimant assumed he was supposed to wait for a call but did not call the courthouse. On Thursday the courthouse was closed for renovations. This fact had been announced by the court on Monday. The Claimant allegedly asked another employee to relay a message to his foreman that he had to take his wife to the doctor on Thursday. He did not report for work. When he was asked for proof of attending jury duty for the week, the Claimant presented his summons. Payroll found that insufficient proof.

The Organization contends Rule 25 (b) was violated when the grievant was suspended for ten days during the period between the disciplinary notice and the hearing. It claims the offense is not a major one. The Rule provides, "When a major offense has been committed, an

employee suspected by the Company to be guilty thereof may be held out of service pending his hearing and he shall be given written confirmation thereof.”

As noted in NRAB Second Division Award 8664, “the rule does not relieve the Carrier of the obligation to have a rational and reasonable basis for making the removal....” Other Boards have held similarly.

While it is true that the Claimant had permission to be absent from Monday through Thursday he was excused for the express purpose of serving jury duty. When he was not needed for that purpose he did not have authorization to take time off with pay. As to the Thursday absence, no proper notification was given to management and the Claimant did not follow the correct procedures for calling off. In addition, he did not update the Foreman on his status for the week allowing the erroneous information that he actually served a week on jury duty to be forwarded to payroll.

There is substantial credible evidence in the record in support of the charges and the thirty day suspension. The thirty day suspension began on the day the Claimant was held out of service. Therefore, he was not penalized with extra days on suspension when he was held out of service until the hearing.

AWARD

Claim denied.

A handwritten signature in cursive script that reads "Barbara Zausner". The signature is written in black ink on a light-colored, slightly textured background.

Barbara Zausner, Neutral Board Member
January 11, 2012

A handwritten signature in cursive script that reads "Robert A. Paszta". The signature is written in black ink on a light-colored background.

Robert A. Paszta, Carrier Member

A handwritten signature in cursive script that reads "Timothy W. Kreke". The signature is written in black ink on a light-colored background.

Timothy W. Kreke, Organization Member