

AWARD NO. 2

Case No. 2

Organization File No.

Carrier File No. 16M(94-0169)

**PUBLIC LAW BOARD NO. 5933**

PARTIES     ) INTERNATIONAL ASSOCIATION OF MACHINISTS AND  
              ) AEROSPACE WORKERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. That, violating the current agreement, CSXT arbitrarily disciplined Machinist W. A. Smith by unjustly dismissing him. The dismissal was effective July 15, 1994.

2. That, accordingly, CSXT be ordered to reinstate Machinist Smith to his former position; compensate him for all lost time at the pro-rata rate of pay as of July 15, 1994 and until restored to service with seniority unimpaired; made whole for all vacation rights, payment for Health and Welfare, Dental Benefits under Travelers Insurance Policy GA-23000, Railroad Employees' National Plan GP-12000 Nd Provident R-5000, and annuity benefits to which he would have been otherwise entitled had he not been improperly withheld from the services of the Carrier and clear his record.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 4, 1996, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On May 27, 1994, Claimant and machinist J. W. Davis had been assigned to perform repair work on locomotive 8040 at Carrier's Huntington Locomotive Shop. When the work was assigned, the foreman told the men that their work needed to be completed by noon. Nevertheless, when their

shift was over at 3:00 pm, the work had not been completed. The two employees were consequently directed to attend an investigation at which they were charged with failing to perform their duties properly and contributing to inefficiency and delay to production. Following the hearing, Claimant was dismissed from service. Machinist Davis was assessed a five day suspension, which is the subject of Case No. 3 before this Board.

At the outset, the Organization raises certain procedural issues that must be addressed. First, the Organization asserts Carrier improperly refused to postpone the investigation to permit the General Chairman to represent Claimant. The record in this case shows the investigation notice was issued on May 28, 1994, scheduling the investigation for June 8, 1994. Asserting he received this letter on June 6, 1994, Local Chairman Hunter requested a postponement, stating that two days notice is an insufficient amount of time to prepare. Hunter further stated.

Further, please be advised that General Chairman James A. Coker wishes to attend and participate in this investigation. Due to prior scheduling of other commitments Mr. Coker is unable to attend. A review of the long standing vacation schedule reveals that the undersigned is on vacation the week of June 27, and Mr. Smith who is also charges in the same manner as Davis is currently scheduled to be on vacation the week of July 4, 1994.

Accordingly, we are requesting a postponement of this investigation. We hereby request that this investigation be held no sooner than July 12, 1994 at 9:00 a.m. This later time will allow for face to face conference of all concerned prior to the commencement of this investigation.

In response to Hunter's request, Carrier, by letter dated June 7, 1994, rescheduled the investigation for June 22, 1994, noting this was prior to the vacation weeks Hunter had asked to avoid. Hunter responded by letter dated June 9, 1994, stating that Claimant had requested General Chairman Coker represent him at the investigation. Hunter further advised that the General Chairman would not be available until July 12, 1994, due to previously scheduled commitments. This request

was denied and the investigation was conducted as scheduled on June 22, 1994. Claimant was represented at the investigation by Hunter.

The Agreement guarantees Claimant the "right to be represented by his duly authorized representative." It does not, as the Organization suggests, entitle him to the representative of his choosing. Hunter was a duly authorized representative, and he provided Claimant with a very competent defense. Accordingly, we find no merit in the Organization's objection.

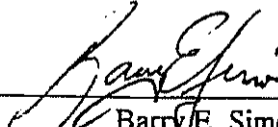
Second, the Organization objects to the fact that Carrier called machinist Davis to testify before all of the other Carrier witnesses had testified. The Agreement places no restriction upon the order of witnesses at investigations. There is no showing this action denied either Claimant or Davis a fair and impartial hearing. This objection, as well, is without merit.

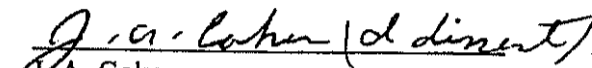
Turning to the substance of the investigation, the Board finds there was substantial evidence to support the Carrier's charge. The only work required of Claimant was the installation of two power assemblies, which could have been accomplished by the noon deadline. He did not even have to remove the old assemblies. During Claimant's shift, it is evident the two men had considerable non-productive time. Although they knew at 7.30 am what they were required to do, they were not ready to go to work until two hours later. Throughout the day, it appears they failed to work in the most efficient manner. Finally, Claimant began cleaning up twenty-five minutes early, despite the fact the work had not been completed. As a result, the locomotive was not ready when it was needed.

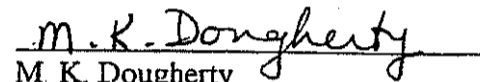
Finding that the charge against Claimant was proven, the Board turns its attention to the quantum of discipline imposed. We recognize there is a substantial disparity between Claimant's dismissal and the five day suspension imposed against machinist Davis. Whereas Davis had seventeen

years of service with no prior discipline, Claimant's record includes a previous dismissal as well as a 90 day suspension in 1989 for falsification of his time card and abandoning his assignment. In light of this, we must find that the dismissal in this case was consistent with the principle of progressive discipline. The Agreement, therefore, was not violated.

AWARD: Claim denied.

  
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Barry E. Simon  
Chairman and Neutral Member

  
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J. A. Coker  
Organization Member

  
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M. K. Dougherty  
Carrier Member

Dated. 2/20/97  
Arlington Heights, Illinois