

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 396

PARTIES)
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TO)
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DISPUTE)
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**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

VS.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. M. Woods, by letter dated September 1, 2017, in connection with allegations that he was in violation of CSX Transportation Operating Rule 104.2(a) and CSX Code of Ethics was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D604317/2017-226590 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Woods must have all mention of this matter removed from his personal record, be immediately returned to service with rights and benefits unimpaired and be compensated for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking mortgage/rent or other financial loss suffered as a consequence of the discipline.”

FINDINGS:

The Board, upon the whole record and all the evidence, finds that: the Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934. This Board has jurisdiction over this dispute involved herein. Parties to said dispute were given due notice of hearing.

STATEMENT OF FACTS:

Claimant, M. M. Woods was hired on September 13, 2010. Claimant was charged with dishonesty, as delineated in Rule 104.2(a). Specifically, the Claimant was charged with his involvement with a scheme to defraud the Carrier in a medical fraud involving sixty-seven (67)

employees, seeking sickness benefits through deceit. The investigative hearing was held on August 10, 2017. It was revealed at that juncture that there was a force reduction in the Huntington, West Virginia area and close proximity in time the Carrier received sixty-seven (67) Certificates of Ongoing Illness and Injury (COII) involving two (2) medical providers. Subsequently, these employees had a concurrent right to file for sickness benefits by way of the Railroad Retirement Board for up to two (2) years. This cost the Carrier millions of dollars. The Claimant sought COII, but was not affected by the furlough. The record reflects a pattern of abuse by the Claimant and concurrently with the other sixty-seven (67) participant-employees.

It is the position of the Organization that the Carrier's medical officer should be required to testify in person for a claim of this magnitude, not over the phone. The Organization also argues that the Carrier's medical officer and hearing officer were biased and unfair, when the medical officer refused to argue with the interpretation of medical documentation and opinions cited by the Organization. Lastly, the Organization asserts that the Carrier had already predetermined the guilt of the Claimant prior to the investigative hearing. As to the merit of the claim, the Organization retorts that the Claimant sustained legitimate on-the-job injuries requiring medical treatment on June 20, 2017 and was subsequently denied follow-up treatment, as required. Thus, the Organization concludes that the Claimant did not violate CSX's Code of Ethics and should not be dismissed for defrauding the Carrier, as CSX contends.

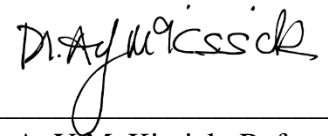
On the other hand, the Carrier counters that it is clear that in accordance with the Carrier's Individual Development and Personal Accountability Policy (IDPAP), a Major Offence can result in dismissal. Moreover, the Carrier asserts that fraud is the type of dishonesty that routinely results in termination. Here, the Claimant was inextricably involved in a scheme to defraud the Carrier. In light of the details earlier described in the facts, the Carrier requests the Board to consider the Claimant's dismissal to be justified under the circumstances enunciated. In regards to the procedural irregularities noted by the Organization, the Carrier retorts that the Claimant was given a fair and impartial hearing. Lastly, the Carrier points out that a telephonic testimony is now widely acceptable, especially at an administrative hearing as the investigative hearing is categorized.

OPINION OF THE BOARD:

After a careful analysis of the investigation, the Board finds that dismissal of the Claimant based upon his engagement with a dishonest medical fraudulent scheme in a pattern and practice involving sixty-seven (67) employees to be an egregious act. In light of his prior charge of insubordination and his short tenure with the Carrier, the Claimant's termination is appropriate under the Individual Development and Personal Accountability Policy (IDPAP) even for the first offense.

AWARD:

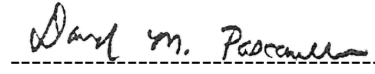
The claim is denied. Claimant M. M. Woods is hereby terminated.



Dr. A. Y McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020