

PARTIES

TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes  
Division of the International Brotherhood of Teamsters  
System File: D17902516

VS.

CSX Transportation, Inc.  
Carrier File: 2016-200611

Arbitrator: Sherwood Malamud

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FINDINGS

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute.

Under date of January 18, 2016, Claimant M. K. Deese signed an Attachment A expedited discipline handling form. Through this document, Claimant Deese elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

The Carrier hired Vehicle Operator M.K. Deese on May 12, 2008. The conduct that gave rise to the discipline that is the subject of this appeal occurred over the course of Claimant's work day, November 12, 2015. Claimant's normal working hours are from 0700 to 1730 hours, Monday through Thursday.

He claimed, and the Carrier paid him 10 hours straight and 1 hour of overtime for November 12. Claimant testified he began his work day at 0530 hours unloading timber for laying ties in Fayetteville North Carolina in the territory of Roadmaster James. After unloading timber in Fayetteville, he was scheduled to unload the remainder of the timber on his truck in Dillion South Carolina. The grapple on the boom was in need of repair. The bolts holding the grapple to the boom were backing out, loose or missing. The repairs on the truck included replacing 2 work lights. Without informing the Assistant Engineer or Roadmaster James under whose supervision Claimant was working that day of the need to repair the grapple, Claimant contacted ARI the Vendor that monitors the repairs of CSX equipment in this area, at 2:00 p.m. ARI did not object to Claimant's suggestion to have George McLaughlin at McLaughlin's Truck Service in Rockingham North Carolina located approximately 1.5 hours from Fayetteville, but approximately 15 minutes from his home and his bank, repair the truck.

At 2:59 p.m., Claimant entered the Carrier's fitness and wellness center located in Hamlet North Carolina, he testified to use the bathroom. Claimant testified to the sequence and timing of his movements on November 12, 2015: Claimant drove the truck to McLaughlin's and left it there at approximately 1:30 p.m. An employee of the repair shop drove Claimant home to retrieve his personal truck. He then drove his personal truck from his home to his bank in Hamlet. Then, he drove to the Carrier's wellness center which he clocked in at 2:59 p.m. to go to the bathroom. He then returned to McLaughlin's and waited for George McLaughlin so he could describe to him the necessary repairs. He left the service shop at approximately 4:30 or 5:00 p.m. to return to his home.

The Carrier concluded that Claimant's conduct on November 12, 2015 violated the following Operating Rules:

Rule 100.1 Employees must know and comply with rules, instructions and procedures that govern their duties. They must also comply with the instructions of supervisors. . .

Rule 104.1 When on duty, employees must:

Devote themselves exclusively to the service of CSX.

Rule 104.2 Employee behavior must be respectful and courteous. Employees must not be any of the following:

a. Dishonest, . . .

Rule 104.7 Employees must have the permission of a supervisor to:

a. Leave work before designated off-duty time, . . .

Rule 104.10 Pay must only be claimed:

1. For actual time or work performed, . . .

### POSITION OF THE CARRIER

The Carrier argues that when Claimant clocked into the fitness center it was 2.5 hours before his quitting time. The statement from the mechanic indicates that Claimant dropped off the truck in the evening, not in the middle of the afternoon as testified to by Claimant. Claimant never reported to any supervisor that the truck was in need of repair. The Carrier claims that Claimant went to the fitness center to work out. He quit early. He was stealing time. The discipline imposed, time served suspension is lenient.

### POSITION OF THE ORGANIZATION

Claimant testified to his activity on the afternoon of November 12. His movements were dedicated to arranging for the repair of the boom truck.

During the Board's deliberations. The Organization strenuously objected to the listing on Claimant's history, the 3 disciplines that should have been removed. One of the entries, was an Informal Corrective Instruction (ICI). The Organization raised the issue, because there is no other forum to raise this objection.

FINDINGS OF THE BOARD

The Organization objected to the November 23, 2015 notification letter. It failed to specify the rules allegedly violated by Claimant's conduct. This Board determined in Awards 106 (MacDougall) and 114 (Malamud); NRAB Third Division Award No. 35022, BMW v. BNSF (Kenis) that it was not necessary to specify the Rules allegedly violated. Under Rule 25, the Carrier had to provide sufficient information to alert Claimant of the conduct that is the subject of the investigation. The Carrier did so in the November 23, 2015 letter.

The Board carefully considered Claimant's testimony at the on property hearing on December 29, 2015. Claimant admitted he did some banking, an activity not dedicated to the service of the Carrier. He left McLaughlin's Truck service at 4:30 or 5:00. His quitting time was 5:30. He testified he only used the bathroom at the fitness center. Yet, the Board calculates that would have occurred within a half hour of his being dropped off at his home by the McLaughlin's employee to enable him to get his truck. This evidence is sufficient to establish that Claimant was not dedicated to the exclusive service of the Carrier for all of the 10 hours straight time he claimed for November 12. There is no dispute that Claimant reported early. That is when he worked overtime. No less than one hour was consumed in Claimant's personal activity. Claimant was guilty of stealing time. The time served penalty that amounts to a 61-day suspension is lenient for this major offense under the IDPAP.

AWARD

Claim denied.



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Sherwood Malamud  
Neutral Member  
November 3, 2017