

PARTIES  
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes  
Division of the International Brotherhood of Teamsters  
System File No. D70800716

VS.

CSX Transportation, Inc.  
Carrier File: 2016-202222

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 February 29, 2016, Claimant M.S. Goodwin signed an attachment A expedited discipline handling form. Through this document, Claimant Goodwin elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

Claimant entered the Carrier's service on March 19, 2007. At the time of his removal from service by Division Engineer R. B. Elliott by letter dated February 19, 2016, Claimant held the position of Lubricator Maintainer. Claimant worked a Monday through Thursday, 4 days per week and 10 hours per day schedule.

On Thursday, September 17, 2015, at 2:10 P.M., Roadmaster C. Johnson observed that Claimant's Company assigned vehicle was parked in the Carrier's Charlotte N.C. Pinoca Yard and his personal vehicle was not in the lot. Then, a week later at 2:08 p.m., on September 24, Roadmaster Johnson observed Claimant park his truck and get into his personal vehicle to leave the Pinoca Yard. Claimant was scheduled to work to 5:30 on both dates. He left about 3 hours early on both dates. Yet, he claimed a full 10 hours pay for both dates. Subsequent to approving Claimant's pay, Roadmaster Johnson corrected Claimant's pay without discussing with him the reduction in pay.

Roadmaster Johnson sent Claimant a notification letter dated September 30, and the Carrier removed Claimant from service, on that date. Due to agreed to postponements an investigatory hearing convened on February 2, 2016. On February 19, 2016, Division Engineer Elliott reviewed the evidence adduced at the hearing. He concluded that Claimant violated

Operating Rules: 104.10, "Pay must only be claimed. . .for actual time or work performed." Rule 104.2 "Employees must not be any of the following: Dishonest." Rule 104.7 "Employees must have permission from a supervisor to : a. Leave work before the designated off-duty time."

### THE CARRIER ARGUMENT

The Carrier argues that it established by substantial evidence that Claimant left work early on both September 17 and 24, 2015. He did not have permission to leave early. He claimed pay for time he did not work. He stole time. It is an offense that standing by itself warrants dismissal.

Claimant has a major offense active as part of his employee history. The Carrier met its burden of proof.

### THE ORGANIZATION ARGUMENT

The Organization argues that the Carrier failed to carry its burden of proof. Although Claimant acknowledged leaving early on September 17 and 24, he worked his full shift. He began his work day early. He worked through lunch. In any event, Claimant did not collect pay for time not worked. Claimant testified that he traveled on Carrier business in his own vehicle to Lubromation on his way home on September 17. Roadmaster Johnson acknowledged that Claimant's accounts were plausible.

The Organization objects to the inclusion in Claimant's history the July 29, 2015 entry. It refers to an incident for which Claimant was not disciplined. He received a time out.

### BOARD FINDINGS

The Organization objected to the September 30, 2015 notification letter. The letter 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 September 30, 2015 letter.

At the on property investigatory hearing, Claimant acknowledged leaving early. He disputed leaving at approximately 2:10 p.m. He maintained that on Thursday, September 24, he left Wilmington at a time that would bring him to Charlotte at a much later time.

Roadmaster Johnson was emphatic that he observed Claimant's Company vehicle at approximately 2:10 p.m. on both September 17 and 24. Claimant equivocated as to when he left for home on both dates. He did not provide an approximate time of departure. With regard to when claimant left work, the Board has before it Roadmaster Johnson's specific testimony, as contrasted to Claimant's equivocation.

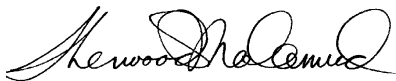
Claimant maintains his own record of time worked. His job places him in the territories of many different Roadmasters. Nonetheless, he did not seek approval from Assistant Division Engineer Nichols for starting early, working through lunch, or leaving early. Claimant was unable to support any of this testimony with statements from any other employee or vendor as to his movements on the two Thursdays. He did not enter into the record any statement from an individual from Lubromation as to the business he transacted with that vendor.

This is a difficult case. On the one hand, the evidence establishes Claimant left work without permission 3-hours early. He claimed his full shift, 10 hours at straight time pay. Yet, the record establishes that if Claimant and Johnson had talked any misunderstanding about record keeping could have been cleared up. However, there is no testimony or evidence that would support a finding that Claimant was not claiming pay for time not worked. Based on this record, the Board concludes that the Carrier met its burden of proof.

The Organization argues that the Board should not take into account the July 29 incident in which Claimant pumped gasoline into a diesel engine which resulted in \$8000 damage and for which claimant was not disciplined. The incident reflects that the Carrier provided Claimant with lenient treatment on that occasion. He incurred major discipline for an incident on October 17, 2014. The Board concludes that this record supports the Carrier's decision to terminate Claimant's employment.

#### AWARD

Claim denied.



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Sherwood Malamud

Neutral Member

Date: November 3, 2017