

Brotherhood of Maintenance Way Employees Division – IBT Rail Conference

and

CSX Transportation, Inc.

Case No. 30
Award No. 30

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier's dismissal of employee P. Andrews for the alleged violation of CSXT Operating Rules – General Rule A; General Regulations GR-2, GR-2A and CSX Ethics Policy for allegedly using a CSXT fuel card to fill up his personal vehicle on January 2, 2013 and for allegedly admitting to such conduct to Division Engineer Murray was on the basis of unproven charges, arbitrary, capricious and in violation of the Agreement (System File D70160013/2013-141061).
2. As a consequence of the violation(s) referred to in Part 1 above, Claimant P. Andrews shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”

Findings:

Public Law Board 7529, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this dispute were accorded due notice of the hearing.

On January 18, 2013, the Roadmaster issued to Claimant a notice of hearing informing him of an allegation and associated rules violations for investigation during the hearing set to convene on February 3, 2013.

Specifically - -

The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with information that I received from CSXT Special Agent Scott Thompson on Friday, January 11, 2013 that you allegedly used CSXT fuel card to fill up your personal vehicle in the vicinity of Montgomery, Alabama on January 2, 2013, and that when you were questioned by Division Engineer Murray regarding this matter, you allegedly admitted to him that you had inappropriately used the company provided fuel card to purchase fuel for your personal use on more than this one occasion.

In connection with the above, you are charged with failure to properly perform the responsibilities of your position, conduct unbecoming an employee of CSX Transportation, theft, unauthorized and inappropriate use of company provided credit card, and possible violations of, but not limited to, CSXT Operating Rules – General Rule A; General Regulations GR-2, GR-2A and CSX Code of Ethics.

On February 19, 2013, the Chief Engineer Maintenance of Way notified Claimant of the following:

A review of the transcript and all the documents associated with the hearing demonstrate the charges against you were proven and that sufficient evidence confirms your actions on the date at issue violated CSX Transportation General Operating Rules – General Rule A, General Regulations GR-2, GR-2A as well as the CSX Code of Ethics.

Because all the information, evidence and testimony associated with the hearing support a finding of guilt, coupled with your undisputed admission to Mr. Murray of using the company provided credit card to purchase fuel for your personal vehicle, it is my decision that the discipline to be assessed is your immediate dismissal in all capacities from CSX Transportation.

On March 17, 2013, the Organization informed the Carrier of the Claimant's intent to seek expedited adjudication of this claim. The Board has reviewed the record established by the Organization and the Carrier in this expedited proceeding.

As required by the Agreement under Rule 25, Discipline, Hearings and Appeals, Section 1 - Hearings, the Claimant received "a fair and impartial hearing" with advance written notice of the alleged "exact offense" and sufficient time to prepare for the hearing with evidence and witnesses.

At hearing the Claimant reviewed the Carrier's evidence and was afforded an opportunity to examine and cross-examine witnesses including the Division Engineer's testimony that Claimant acknowledged committing the charged misconduct. The Division Engineer's testimony expresses clarity in recalling Claimant's acknowledgement of the charged offense whereas Claimant's testimony asserts a lack of recall for an incident occurring thirty (30) days prior to the hearing yet Claimant expresses ready recall that "[i]n my 41 years of life I've never been in any trouble[.]"

Claimant's admission against interest identifying his culpability to the Division Engineer is persuasive and probative evidence proving that he committed the "exact offense" in the notice of hearing. That is, Claimant used the CSXT provided credit card to purchase fuel for his personal vehicle on January 2, 2013. The law enforcement report corroborates Claimant's diversion of funds that directly resulted in a personal benefit for him and led to the subsequent issuance of a felony warrant.

CSXT's Code of Ethics defines fraud as "a type of deception such as making someone believe something that is not true either by words, conduct or concealing important information." An example of workplace fraud under Fraud and Theft Prevention in the Code is "[a]busing or misusing company equipment, material, property or credit cards." An employee committing fraud is subject to discipline up to dismissal.

Claimant's use of the credit card for personal gain is improper as it violates General Rule A (an employee "must know and obey rules and special instructions that relate to their duties") and General Regulation GR-2 (an employee "must not ... be disloyal, dishonest"). Claimant's fraudulent diversion of Carrier funds constitutes theft and reflects disloyalty and dishonesty. Issuance of the felony warrant supports the Carrier's charge that Claimant engaged in criminal conduct in violation of General Regulation GR-2A ("criminal conduct which indicates a potential danger to the company ... is prohibited").

An employee's dismissal for a single offense involving improper use of a CSXT provided credit card to purchase fuel for personal vehicle was upheld in on-property Award 103 by Public Law Board 7120. There are no circumstances in this claim that differentiate it from the similarity of circumstances and consequent penalty in Award 103.

Since the "exact offense" in the notice of hearing is proven and establishes violations of several rules, the Carrier did not engage in an arbitrary and capricious act when it dismissed the Claimant for the major infraction of theft, fraud and dishonesty. As there is no violation of the Agreement as presented in Part 1 of the Organization's Statement of Claim, the claim is denied.

Award:

The claim is denied.



Patrick Halter
Neutral Member
PLB 7529 Case No. 30

Dated this 28th day
of August, 2013