

**PUBLIC LAW BOARD NO. 7529**

Brotherhood of Maintenance of Way	)	
Employes Division - IBT Rail	)	
Conference	)	
	)	
and	)	Case No. 62
	)	Award No. 62
	)	
CSX Transportation, Inc.	)	

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's dismissal of Claimant M. Armstrong for the alleged violation of CSXT Operating Rules 100.1, 104.2, 104.7 and 104.10 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21000814/Carrier File 2014-165497).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Armstrong shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On February 19, 2014, the Carrier issued a notice of investigation to Claimant stating:

The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with GPS location data, in the vicinity of West Palm Beach, Florida, received February 12, 2014 for your CSX Team Vehicle (A9586D), when it is alleged that your team departed your assigned work area prior to the end of regularly scheduled work hours, without permission, on multiple days between January 5, 2014 and February 12, 2014. Additionally, the payroll claims submitted for these days indicate that you claimed pay for time not worked.

In connection with the above incident, you are charged with failure to properly perform the responsibilities of your position, dishonesty, leaving work without permission, claiming pay for time not worked, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 104.2, 104.7, and 104.10.

Rule 100 – Application of Rules and Special Instructions, requires employees to know and comply with rules, instructions and procedures governing their duties and to take the safest course but, should there be a need for clarification on that course, to contact a supervisor (Rule 100.1).

Rule 104 – Employee Behavior, states employees "must not be ... dishonest" (Rule 104.2), employees "must have the permission of a supervisor to [l]eave work before designated off-duty time" (Rule 104.7) and "[p]ay must only be claimed [f]or actual time or work performed" (Rule 104.10).

On March 12, 2014, the investigative hearing convened wherein Claimant and his representative were afforded the opportunity to present witness testimony, cross-examine Carrier witnesses and introduce into the record information or exhibits pertinent to the matter under investigation.

On April 1, 2014, the Division Engineer notified Claimant as follows:

A review of the evidence, testimony, and all other documents associated with the hearing demonstrate that the charges against you were proven[.]

Based upon my finding of guilt, coupled with the serious nature of the offenses, it is my decision that the discipline to be assessed is your immediate dismissal[.]

On April 11, 2014, Claimant elected to proceed with a review of the imposed discipline (dismissal) by submitting a claim to this Special Board of Adjustment No. 7529. In doing so, Claimant acknowledged that the decision of the Neutral Member of the Board is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement.

#### Carrier's Position

Claimant received a fair and impartial investigative hearing which shows there is substantial evidence that Claimant violated the charged rules. That is, Claimant did not perform service during all of the hours (straight time and overtime) for which he requested payment between January 5, 2014 and February 12, 2014. Claimant does not dispute the validity of the GPS data and payroll records which support a finding of rules violations.

For example, Claimant recorded two (2) hours overtime on February 4 for moving the team's truck on that date but he did not move the truck until the next day (February 5) which took him about ninety (90) minutes to complete. In this regard, Roadmaster Pettit advised Claimant and the team that there was sufficient time to move their personal vehicles to the new location on February 4, 2014, without incurring overtime. Instead of following the Roadmaster's instruction, Claimant elected to cease work early on February 4 and move his truck the following morning (February 5) and claims two (2) hours overtime for work when he actually incurred only ninety (90) minutes on February 5. Claimant's assertion that he was following his foreman's direction is self-serving and not credible given that he was recording overtime on a rest day for services not performed.

Theft of time is a serious offense and warrants dismissal for a first time offense even for a fifteen (15) year employee. Notwithstanding his knowledge of and training on CSX rules and Code of Ethics, Claimant repeated his conduct thereby compounding his wrongdoing. Awards 12, 30 and 40 of this Board have sustained dismissal for theft and dishonesty.

#### Organization's Position

In January and February 2014 Claimant was assigned as a machine operator to Surfacing Team 5T08. He operated a ballast regulator and worked alongside two (2) other machine operators. Claimant reported to Foreman Illescas and Roadmaster Pettit. At all times during the period of January 5, 2014 – February 12, 2014, Claimant acted in accordance with his foreman's instructions, the official responsible for directing the team. Claimant had no reason or basis to determine whether the foreman's directives were inappropriate or invalid. Thus, there is no basis for the Carrier's charge that Claimant acted

without permission or authority. Instead, and in accordance with First Division Award 24759, Claimant acted on the basis of a reasonable and proper directive. In this regard, the Organization asserts that Claimant left the tracks only when the 3:00 p.m. track curfew approached. He returned to the hotel but understood that he remained on call until the conclusion of the scheduled work day (1730 hours). The foreman, not Claimant, inserted the hours claimed for work in the payroll system. "[Claimant] signed the payroll sheets under the assumption that everything had been approved ... that the Roadmaster was aware that they were at the hotel, he was aware of the GPS tracking system, he had nothing to hide and he merely got caught in a situation as a dedicated employee of following the guidelines set forth by the supervisors." There was no intent to defraud or steal from the Carrier.

Claimant is a 15-year employee with no prior history of discipline. The Board can reduce or revoke his dismissal as reflected in its awards. Claimant's dismissal is unwarranted because the foreman - - a third party - - was at fault and not Claimant.

### Findings

Public Law Board No. 7529, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

A decision by this Special Board of Adjustment No. 7529 is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement. Within that evidentiary framework, the Board renders these findings.

The regularly scheduled work hours for Surfacing Team 5T08, a floating gang between Hialeah (FL) and West Palm Beach (FL), were 0700 - 1730, Sunday through Wednesday. On a daily basis the team (foreman, Claimant and two (2) other machine operators) traveled in the CSX vehicle to the headquarters location to pick up dispatch bulletins and meet with the Roadmaster for morning briefing and safety meeting then proceeded to the worksite. The gang's assignments included the Corridor, the Auburndale and outside party projects. In certain areas of the Corridor, the gang had to be off the tracks by 3:00 p.m. ("rush hour").

Claimant acknowledged understanding the rules he is charged with violating. There is substantial evidence that Claimant violated those rules. Notwithstanding the foreman's preparation of payroll by inserting hours as actually worked, Claimant reviewed and signed the "Engineering Payroll Transmission Confirmation" document prior to its submission to the Roadmaster. By signing the confirmation document Claimant knowingly sought payment for hours not actually worked on January 5, 6, 7, 19, 20, 21, 23, 24 and February 2, 3, 4 and 5, 2014. For example, on February 4, 2014, Claimant signed and confirmed his payroll data wherein he claimed 10 hours plus 2 hours overtime when he actually worked six (6) hours. Claimant acknowledged he never moved the Carrier's truck or his personal vehicle on February 4 in accordance with the Roadmaster's instructions.

Claimant's testimony that he "gets paid 10 hours no matter what" is disingenuous given his 15 years of service (15 years) in the railroad industry. The Carrier can reasonably expect that an employee with 15 years of service interpreting the rules as authorizing 10 hours of pay "no matter what" will clarify that interpretation. Claimant elected not to clarify it with his foreman or the Roadmaster. Claimant acted on an assumption for personal gain at his risk.

Award 37 of this Board establishes that “[t]heft encompasses knowingly receiving compensation for time away from work that was not authorized as well as claiming and receiving compensation for time not worked.” Applying this precedent to the findings in this claim, the Board concludes that Claimant knowingly was “claiming receiving compensation for time not worked.” In other words, Claimant committed theft of time and, in doing so, violated Rule 100.1 (know and comply with rules, instructions and procedures governing duties and seek clarification from the supervisor to ensure the safest course is followed), Rule 104.2 (prohibits dishonesty), Rule 104.7 (requires supervisor’s permission to leave work prior to end of scheduled workday) and Rule 104.10 (“[p]ay must only be claimed [f]or actual time or work performed”).

With proven charges, the Board considers whether the penalty of dismissal is arbitrary, unwarranted or excessive. Precedent in on-property Third Division Award 36337 is instructive:

Employee theft is one of the few offenses for which summary discharge is deemed appropriate. The Carrier is entitled to expect its employees to be honest and to assume responsibility for not stealing, no matter how large or small the value of the item. In this instance, when the Claimant removed the gasoline from Carrier property, it is clear that his intent was to deprive the Carrier of the gasoline contained therein and convert it to his own use. On that basis alone, discharge was not an unreasonable or arbitrary action on the part of the Carrier.

Further support for dismissal as the appropriate penalty for theft is on-property Third Division Award 31839:

This Board has established a consistent record of viewing any form of theft as a serious breach of trust between employee and employer. Although Claimant’s disingenuousness at the Hearing is admirable, as is his elicited willingness to repay Carrier, his admissions were the result of having been caught. He did not step forward to reveal his actions. Rather, it was not until the Carrier’s Accountant discovered the charges in mid-July that Claimant made any offer of repayment or expression of contrition. Under the circumstances, we see no reason to disturb Carrier’s assessment of discipline.

Based on the precedent in the on-property Third Divisions Awards 36337 and 31839, this Board finds that Claimant’s dismissal is not arbitrary, unwarranted or excessive. This claim is denied.

Award  
Claim denied.

Patrick J. Halter /s/  
Patrick J. Halter  
Neutral Member

Dated on this 2nd day of  
December, 2015