

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)	
Employes Division - IBT Rail)	
Conference)	
)	
and)	Case No. 63
)	Award No. 63
)	
CSX Transportation, Inc.)	

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

1. The Carrier's dismissal of Claimant C. Hollis 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 D21000914/Carrier File 2014-165561).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Hollis 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 11, 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 March 31, 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 20, 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.

Claimant acknowledges that the practice for Surfacing Team 5T08 was to end their workday prior to the regularly scheduled 1730 hours, return to the hotel and claim ten (10) actual hours of work. In this regard, the actual hours worked by Claimant were substantially below the hours reported for payroll. For example, on January 7 approximately 7.5 actual work hours, approximately 7 actual work hours on January 21 and approximately 6.75 actual work hours on January 24, 2014.

Claimant states he followed the foreman's instructions; however, Claimant did not seek clarification or inquire with the Roadmaster during morning briefing about the practice of leaving the worksite early and returning to the hotel prior to 1730 hours (end of scheduled workday). Claimant testified he does not wear a watch and was unaware the team was leaving early; however, he did not claim minutes but hours of time not worked. His other argument that another Roadmaster had Claimant and the team improperly report time during the week of January 31, 2014, is not credible.

Behavior in violation of the rules is not sanctioned by the Carrier. As noted in Award 3 of this Board and Award 15 of Special Board of Adjustment No. 1112, Claimant is individually responsible. His offer to repay the monies collected is magnanimous but a recognition that he billed for hours not actually worked and an admission of guilt.

Theft of time is a serious offense and warrants dismissal. Claimant's record shows a major rule violation on April 8, 2013 and prior serious infraction on June 2, 2013. This incident of repeated theft of time over the course of two months is Claimant's third violation within twelve (12) months. 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 while working alongside other machine operators and reported to Foreman Illescas and Roadmaster Pettit. Award 1 of this Board establishes precedent that any factual disputes must be resolved in Claimant's favor.

At all times during the period of January 5, 2014 - February 12, 2014, Claimant acted in accordance with his foreman's instructions as the foreman directed Surfacing Team 5T08. Claimant had no reason or basis to conclude that 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 and Award 10 of Special Board of Adjustment No. 1122, Claimant acted on the basis of a reasonable and proper directive.

Claimant left the tracks only when the 3:00 p.m. track curfew time approached. He returned to the hotel but understood that he remained on call until the conclusion of the scheduled work day (1730 hours). Also, the foreman, not Claimant, discussed the team's work with the Roadmaster on a daily basis. Therefore, the order to leave prior to 1730 hours but still receive pay had to be appropriate. Claimant did not record the hours claimed for work for purposes of payroll; the foreman handled the weekly payroll records. Thus, Claimant did not charge for time not worked.

Claimant is a fourteen (14) year employee with no prior history of discipline. By following his foreman's instructions, Claimant did not attempt to defraud or steal from the Carrier. 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. Within that context, First Division Awards 24894 and 25085 show that the penalty imposed is unwarranted.

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, this is the situation presented in this claim. Claimant's disingenuous testimony at the hearing - - no watch so he was unaware leaving hours prior to end of regularly scheduled workday - - and stepping forward with an offer to repay - - an act of contrition - - after charged with rules violations. Claimant acknowledged understanding the rules he is charged with violating. There is substantial evidence that Claimant violated those rules.

For example, 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. When he signed the confirmation document, he knew he had not actually worked the hours claimed for pay.

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”).

The Organization states that Claimant has “a clean disciplinary record, with zero prior entries.” Claimant’s Employee History shows that he committed an operating rules infraction on June 2, 2013, and incurred a major charge on April 8, 2013. In addition to Claimant not having “zero prior entries” in his disciplinary record, the Board reviewed First Division Awards 24894 and 25085 where discipline was lessened or rescinded. Those claims did not involve theft and dishonesty as in this claim; they are not persuasive precedent.

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.

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 4th day of
December, 2015