

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)
Employes Division - IBT Rail)
Conference)
)
and)
)
)
CSX Transportation, Inc.)

Case No. 80
Award No. 80

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

1. The Carrier's discipline of Claimant C. Hamilton for the alleged violation of CSXT Operating Rule 104.10 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21001815/2015-183283 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Hamilton shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On October 28, 2014, the Carrier issued a notice of investigation to Claimant stating:

The purpose of this formal investigation [on November 7, 2014] is to determine the facts and place your responsibility, if any, in connection with information received October 8, 2014, in the vicinity of Indianapolis, Indiana, that on September 8, 2014 and September 12, 2014, you exceeded FRA allowed hours of service maximum for CMV drivers and falsified payroll and/or FRA documents on various days in September 2014.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, falsifying payroll, failing to observe hours of service regulations, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 103.6, 104.2 and 104.10, as well as CSX Safeway Rule GS-1.

Following mutually agreed to postponements by the Carrier and Organization, the investigative hearing convened on January 14, 2015, wherein Claimant and his representative were afforded the opportunity to present witnesses and documents pertinent to the matter under investigation and examine Carrier witnesses and documents.

On February 2, 2015, the Chief Engineer notified Claimant that he had "falsified payroll" based on the record established at the investigative hearing. "As such, you are guilty of violating CSXT Operating Rule 104.10." Given the rule violation, the Carrier assessed Claimant a thirty (30) calendar day suspension.

On February 25, 2015, the Organization notified the Carrier that Claimant, after discussing this matter with a representative of the Organization, elected to proceed with a review of the imposed discipline by submitting this claim for “expedited handling as provided for in Appendix ‘N’ Expedited Discipline Agreement of the June 1, 1999 BMW/CSXT Agreement.”

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.

Claimant agreed to “expedited handling” of this claim. In doing so, he acknowledged that the decision of the Neutral Member of this 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. With respect to Rule 25, the Organization asserts that the Carrier’s omission of “September 1, 2014” in the notice of hearing renders this proceeding defective. The omission was attributable to a typographical error. Precedent in Third Division Award 33046 establishes that a typographical error does not constitute a fatal procedural defect. Applying this precedent disposes of the Organization’s assertion. Furthermore, the Board finds that the charged letter was properly amended to include “September 1, 2014” for review.

As for the discipline assessed to Claimant, on-property Third Division Award 37357 captures the Board’s function in this matter.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier’s, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier’s actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of its discretion. See Second Division Award 7325 and Third Division Award 16166.

Manager Adams is known for meeting, regularly, with CMV drivers to ensure that the hours they record in their logbooks matches the hours they are reporting for pay. During the period of July 2014 - September 2014, Manager Adams was away from the workplace and the meetings did not occur. Upon his return to duty in October 2014, he received an audit report showing discrepancies between the hours of work recorded in the logbooks by CMV drivers and their hours of work reported to payroll for which they received compensation. That is, hours reported for pay exceeded the hours actually worked as recorded in logbooks. Rule 104.10 states that “[p]ay must only be claimed ... [f]or actual time or work performed.”

On September 1, 2014, Claimant was a member of Gang 5XC3. He recorded eleven (11) hours of work in his logbook for September 1 which was the same number of hours reported by other gang members; however, Claimant received pay for fourteen (14) hours. Claimant’s explanation for the three (3) hour difference between the hours actually worked (11) and hours paid (14) is that the foreman estimated

hours for pay because Claimant was unable to reach the foreman by telephone on September 1 to provide hours actually worked. Notwithstanding the 14 hours reported for pay, Claimant does not assert that he actually worked 3 hours more than other gang members on September 1. Since Claimant actually worked 11 hours but received pay for 14 hours, he violated Rule 104.10. In this regard, the wording in Rule 104.10 is mandatory - - pay must be only for time actually worked or performed - - and Claimant's pay for hours not actually worked or performed violates this rule. His explanations - - not aware of the 3 hours of extra pay until he received the charge letter, often unable to access "the system" to verify his hours and pay, did not know how to correct his time report or know who to notify, not responsible for the discrepancy because the foreman reports hours to payroll and not at work to review his actual hours before it was forwarded to payroll - - do not insulate him from the rule violation.

On September 8 and 12, 2014, Claimant's logbook shows that he reported sixteen (16) hours actually worked. Sixteen hours, Manager Adams testified, exceeds the daily maximum of 14 hours of service allowed under Federal regulation for a CMV driver. Manager Adams charged Claimant with "falsifying payroll" and "failing to observe hours of service regulations" among other items. Although the deciding official (Chief Engineer) concluded that Claimant "falsified payroll" on September 8 and 12 in violation of Rule 104.10, the Chief Engineer's decision did not find that Claimant "fail[ed] to observe hours of service regulations" on those dates.

Claimant reported 16 hours for pay on September 8 and 12 whereas other gang members reported thirteen and a half (13.5) hours. Unlike September 1 where Claimant did not assert he worked 3 hours beyond and above the 11 hours reported by other gang members, for September 8 and 12 he asserts that he worked 16 hours which was two and a half (2.5) hours more than the 13.5 hours reported by other gang members. To explain the 2.5 hour difference, Claimant testified initially that he drove the log truck and operated a crane but he later testified that he did not drive the log truck. Claimant's inconsistent testimony diminishes its value. The Board finds that Claimant worked as a machine operator alongside the other machine operators and they all performed 13.5 hours of work on September 8 and 12. As with September 1 Claimant received pay for hours not actually worked on September 8 and 12 in violation of Rule 104.10.

Precedent of this Board in Awards 9, 33, 62 and 65 show that employees are responsible for ensuring their hours actually worked are correctly reported and their pay received aligns with those reported hours. Claimant did not align his hours actually worked with pay received which resulted in the Carrier assessing Claimant a thirty (30) day suspension for a rule violation. Applying the Board's precedent in Awards 9, 33, 62 and 65 to the circumstances in this claim, the discipline assessed to Claimant is not excessive. Accordingly, the claim is denied.

Award

Claim denied.


Patrick J. Halter
Neutral Member

Dated on this 14th day of
March, 2016