

BEFORE PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 15

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

1. The discipline (withheld from service and subsequent suspension) imposed upon J. L. Sanders for alleged conduct unbecoming a CSX employee in connection with an arrest at the Springfield, Tennessee Depot on March 10, 2000 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, J. L. Sanders shall now be paid for all time lost from the time he was removed from service on March 13, 2000 until he was reinstated, and his record shall be cleared of all charges.

Facts:

Claimant J. L. Sanders was suspended from service for 30 days during the period from March 13 through April 6, 2000 and November 20 through December 11, 2000 in conjunction with an investigation held on November 20, 2000.¹

On Friday, March 10, 2000, Claimant was arrested at the Carrier's Springfield, Tennessee Depot by the Robertson County Sheriff's Department. Claimant had failed to adhere to the terms of his probation after he was found guilty of theft of CSXT's property in a court of law. At the time, he was arrested, he had failed to make restitution of

¹ Claimant was paid 10 days vacation from March 27, 2000 through April 7, 2000.

\$565.00, as directed by the court two years earlier; \$100.00 of this amount was owed to CSXT.

By letter dated March 18, 2000, the Carrier charged Claimant with conduct unbecoming an employee and held him out of service pending an investigation, which was scheduled for April 7, 2000. By letter dated April 6, 2000, however, the Organization requested an indefinite postponement of the hearing as a result of Claimant being under a doctor's care.

Ultimately, the formal investigation was held on November 20, 2000, and by letter dated December 6, 2000, Claimant was found guilty as charged. He was assessed discipline of actual time served between March 13, 2000 and April 6, 2000 and between November 20, 2000 and December 11, 2000.

The Organization appealed the discipline, and the matter was discussed in conference on March 7, 2001. The parties were not able to resolve the dispute, and therefore, it was placed before this Board for determination.

Contentions of the Parties:

The Carrier contends that Claimant was afforded a fair and impartial hearing, that CSXT met its burden of producing substantial evidence of Claimant's guilt, and that the discipline assessed was fully justified.

The Organization submits that the Carrier failed to prove that Claimant had violated any specific rules. According to the Organization, Claimant's arrest amounted to harassment, largely because Claimant's guilt in the instant case was based, not on any

current wrongdoing, but on earlier charges of which he had been cleared in *NRAB Third Division Award No. 33612*.² Thus, the Carrier was subjecting Claimant to double jeopardy.

It is the Organization's additional position that CSXT orchestrated Claimant's arrest and then unduly delayed its investigation simply because it wanted to keep Claimant out of service.

Findings:

The Record clearly establishes that Claimant was afforded a fair hearing, and all of his due process rights were protected. He had proper notice of the charges and date of hearing, ample time to prepare a defense, opportunity to produce and examine evidence, and opportunity to present and cross-examine witnesses. There were no procedural deficiencies.

With respect to the merits of the case, CSXT has sustained its burden of proof. Claimant was arrested for violating the terms of his probation and, as a result, was charged with conduct unbecoming a CSXT employee. Initially, Claimant contended he was unaware that there was a warrant for his arrest for failure to satisfy his probation and failure to pay a fine, as directed by the court. Later in the investigation, Claimant admitted knowing that he had a fine to pay, but asserted that he did not have the money to pay it.

Neither excuse was convincing. Claimant knew he was on probation. Yet, for more than two years, he neglected to pay his \$100.00 fine, which was a legal obligation.

² Following issuance of the Award in *NRAB Third Division Award No. 33612*, it was learned that in a civil proceeding where a misdemeanor charge was bound over by the Grand Jury, just prior to the trial scheduled for April 15, 1999, Claimant entered a plea of guilty for which sentence was issued.

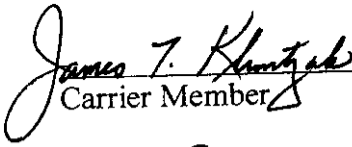
Moreover, having been granted back pay as a result of the decision in *NRAB Third Division Award No. 33612*, Claimant's excuse of a lack of money rings hollow.

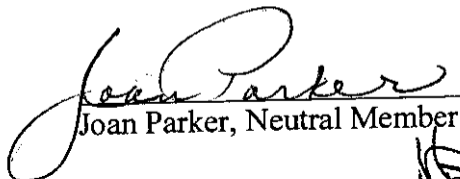
As to the Organization's contention that CSXT improperly delayed the investigatory hearing, it is undisputed that Claimant was under a doctor's care between April 7 and November 19, 2000. As the Carrier notes, if Claimant was too ill to attend the hearing during this seven-month period, it can be inferred that he was too ill to perform service for the Carrier during that same time. Furthermore, it was the Organization that requested an indefinite postponement of the hearing. Therefore, the Carrier cannot be found guilty of dragging its feet for the purpose of delaying the investigation.

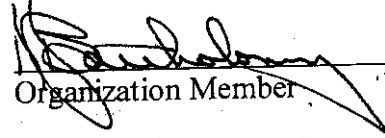
Given the evidence in the Record, including Claimant's admissions and contradictory statements, the Carrier has established Claimant's guilt. The discipline assessed was not unreasonable, and therefore, the claim must be denied.

Award

The claim is denied.


Carrier Member
Dated: April 7, 2004


Joan Parker, Neutral Member


Organization Member
Dated: 4-7-04