

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE**

**And**

**CSX TRANSPORTATION, INC.**

**Case No. 41**

\* \* \* \*

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

1. The dismissal of B & B Mechanic D.L. Hammond for his unauthorized absence commencing October 4, 2004 was without just and sufficient cause and excessive and undue punishment.
2. B & B Mechanic D. L. Hammond shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

**Findings of Fact**

Claimant D. L. Hammond was hired on September 15, 1976 and was the incumbent of a Bridge and Building (B & B ) Department Mechanic position 6CR-074 on the Central West Service Lane at all times relevant to this dispute. Claimant's last day of compensated service was September 16, 2004, followed by two weeks' (i.e., 80 hours) vacation, ending on October 4, 2004. Thereafter, Claimant had no further contact with CSXT.

Consequently, by letter dated October 15, 2004, Claimant was directed to attend an investigation in regard to "...being absent without proper authority, abandoning your position, and failure to protect your assignment in possible violation of CSX Transportation Operating Rules." After one postponement, requested by the BMW, the investigation was convened on November 11, 2004. Claimant failed to appear, and repeated attempts by both Carrier and Organization representatives to contact him were unsuccessful.

The investigation revealed that on March 26, 2004, Claimant pled guilty to aggravated riot, a felony of the fifth degree, for which he was sentenced to three years probation by the Pickaway (Ohio) County Court of Common Pleas. Thereafter, on October 4, 2004, Claimant contacted the court and "advised that he was not willing to comply with the terms and conditions of his Community Control. He stated that he would like to serve his suspended sentence." (Carrier's Exh. B, p. 27) On October 6, 2004, Claimant was found guilty of the sanctions of his community control and was sentenced to imprisonment in the Ohio Department of Rehabilitation and Correction for nine months.

Based upon these findings, Claimant was found guilty of violating Transportation Operating Rules GR-1 and GR-2 and dismissed from service, effective November 15, 2004. General Regulation GR-1 states:

Employees must report for duty at the designated time and place. Without permission from their immediate supervisor employees must not:  
1. absent themselves from duty....

General Regulation GR-2 reads: "...Employees must not...5. Willfully neglect their duties...."

The Organization challenged Claimant's dismissal, and following CSXT's final denial of the appeal in February 2005, the Organization submitted the matter to this Board for adjudication.

**Positions of the Parties**

The Carrier contends that it had just cause to discharge Claimant based upon his failure to report to work. The fact that Claimant's incarceration prevented him from coming to work did not constitute a valid excuse for his failure to protect his job. The Carrier submits that the Organization's appeal merely seeks leniency, which is not an appropriate consideration for this appellate Board. Moreover, arbitral precedent supports dismissal in this type of circumstance, where an employee's criminal misconduct resulted in his failure to come to work.

The Organization emphasizes that Claimant had over 28 years of unblemished service with the Carrier. Therefore, his dismissal was excessive and undue punishment. In support of its position, the Organization notes that there is no evidence in the Record indicating that the events which led to Claimant's conviction and imprisonment were in any way job related. According to the Organization, it is simply unreasonable for the Carrier to rely upon one outside incident as the sole basis for terminating Claimant's employment. This is particularly true in this case where Claimant had almost 30 years of unblemished service, and there has been no showing that corrective discipline would have been ineffective.

**Opinion**

It is undisputed that Claimant failed to report to work because he was serving time in an Ohio prison. Moreover, he voluntarily abrogated his responsibilities under a criminal

sentence and thereby landed in jail solely as a result of his own actions. Had Claimant fulfilled the terms and conditions of his probation, he would not have been incarcerated.

The Carrier's Operating Rules require employees to report regularly for work, and those employees who engage in misconduct that prevents them from meeting their attendance requirements are subject to summary discharge. The Organization argues that Claimant's misconduct was mitigated by virtue of the fact that his felonious behavior was not job related. Regardless of the events that precipitated Claimant's conviction, however, he went to jail and consequently was absent from work.

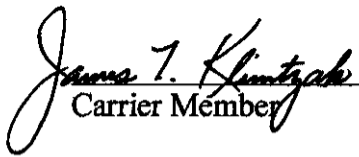
There is substantial arbitral authority in virtually all industries which holds that imprisonment for violating the law does not constitute a legitimate excuse for failing to report regularly to work. As was held in *Public Law Board No. 6392, Case 56 (Vaughn)*: "The employer is not obligated to retain in its employ those who as a result of their own misconduct, are placed in situations where they cannot get to work, as scheduled." (See also, *NRAB, Third Division, Award Nos. 37056 (Javits) and 35371 (Simon)*; *Public Law Board No. 5396, Case 4 (Gold)*; and *Public Law Board No. 6564, Case 11 (Parker)*).

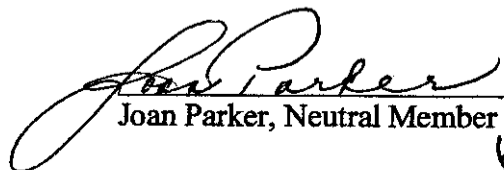
There is no contention that Claimant was denied a full and impartial investigation. Thus, the Organization's case essentially is a request for reinstatement based upon Claimant's seniority and unblemished record. While this Board recognizes Claimant's long years of service and his excellent disciplinary history, those factors do not outweigh the Carrier's right to expect regular and punctual attendance by its workforce. Claimant's willful misconduct, which led to his imprisonment, undermined the entire employment relationship. Although the Organization contends that dismissal was unduly harsh

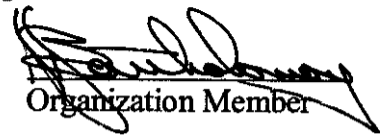
discipline, the right to impose a lesser penalty rests with the Carrier. In light of the Record below, there is no basis to find that the Carrier either denied Claimant due process or abused its managerial discretion.

Award

The claim is denied.

  
Carrier Member  
Dated: 10-24-05

  
Joan Parker, Neutral Member

  
Organization Member  
Dated: 10-24-05