

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
Division of the International Brotherhood of Teamsters

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3 of the June 19, 1999 Agreement, the following will serve as our appeal of the discipline assessed to BMW employee A.D. Epps, as a result of the hearing held on March 23, 2006 in Atlanta, GA.

The Carrier's actions were arbitrary and cannot stand. For the reasons stated herein, plus the objections raised at the hearing, the charge letter and all matter relative thereto should be removed from Mr. Epps' personal record file, Mr. Epps should be immediately returned to service and be made whole for all losses suffered.

OPINION OF BOARD: A. D. Epps, the Claimant, was hired by CSXT in the Engineering Department on August 10, 1972. At all times relevant to the case at bar, Claimant Epps was assigned as a Vehicle Operator on the Atlanta Service Lane Work Territory (SLWT). On March 2, 2005, while working his assigned position as Machine Operator "A" on the Atlanta SLWT, the Claimant was instructed by Assistant Roadmaster B. W. Skinner to clean out the bed of the vehicle he was operating. Although he never mentioned anything about an injury at the time, some two (2) months later, on June 3, 2005, Claimant Epps reported to Engineer Track S. D. Frazier, that he had suffered an on-duty injury on March 2, 2005. Specifically, he alleged that he had hurt his back on March 2, 2005 when he slipped on ice and snow that was accumulated in the bed of the truck.

Although Claimant Epps never reported the alleged injury on that date to Mr. Skinner or any other Carrier officer., he was requested on June 3, 2005 to fill out the appropriate Personal Injury report form (PI-IA) so the Carrier could document the injury properly. Among other things, Claimant recorded in the PI- I A form completed June 20, 2005 that there was snow and sleet on the truck on March 2, 2005, which allegedly precipitated the alleged injury. However, research led the Carrier to suspect that Claimant Epps' account was not entirely factual, because, according to the National Weather Service (NWS) weather records for March 2, 2005, there was no possibility of snow or ice in the Atlanta, Georgia area. Indeed the records indicated that the temperature was nearly 50 degrees F. that day.

Carrier's Chief Medical Officer (CMO) Dr. Thomas J. Nielson reviewed the Claimant's medical records and determined "NO MEDICAL INFORMATION PROVIDED TO DATE SUPPORTS A WORK RELATED CAUSATION FOR THE MEDICAL CONDITIONS UNDER TREATMENT. In fact, the records clearly state '[h]e does not recall any precipitating event or injury.' I find no medical documentation to support the claimed 3/02/05 injury to Mr. Epps. " (Original emphasis maintained. Subsequently, by letter dated August 5, 2005, Claimant Epps was instructed to attend a formal investigation into charges that he may have filed a false and dishonest accident report in violation of Carrier rules. Specifically, the Claimant was charged with "violating CSXT Operating Rule GR-2 part 7, 'Employees must not. . . make any false statements. " Claimant Epps was also informed he was withheld from service pending the results of the investigation.

Following several postponements, some of which were requested by and granted to the Organization, the formal hearing was conducted on March 23, 2006. Despite adequate written notice, the Claimant failed to appear for the hearing, which was held *in absentia* after the Hearing

Officer declined the Organization's request for another adjournment. From the evidence and testimony presented at the hearing, it was determined Claimant Epps' was guilty as charged and dismissed from the service of the Carrier, by letter dated April 10, 2006.

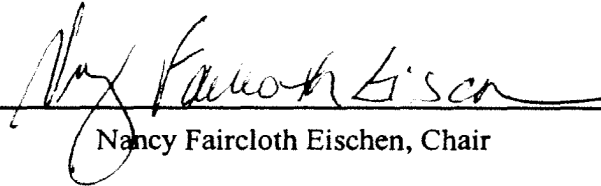
BMWE Allied Eastern Federation (AEF) Vice Chairman L. C. Smith timely appealed the claim to the highest officer of the Carrier designated to handle such matters, Director Labor Relations I H. Wilson, by letter dated April 29, 2006. Mr. Smith argued, "the organization takes strong exception to the Carrier holding the hearing without the charged employee being present. Mr. Smith further averred, "*[Mr. Bossone's/ reasoning [to not allow a postponement to allow Claimant Epps to attend] was that I had not issued a postponement request in writing and that he had a hearing officer on the way from out of town.]*" Further, Mr. Smith argued the charges were false because "*the Carrier is the moving party, therefore, it is on the Carrier to prove the charges. The Carrier did not prove the charges in this case. It was quite obvious the Carrier was looking to its medical department to support charges with Dr. Nielson's opinion*". The claim was denied at all levels of handling before appeal to this Board for final and binding determination in arbitration.

The crux of the Organization's procedural objections revolve around Claimant Epps' absence from the hearing, but we conclude that Claimant Epps was provided sufficient information and notice, received several postponements and neither he nor the Organization presented persuasive evidence that his failure to appear was justified. [The Organization asserted that Claimant Epps was unable to attend the investigation because he was receiving kidney dialysis, but the record contains no documented proof he was in fact on dialysis on the date of the hearing].

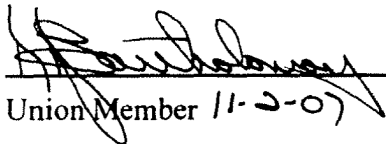
As to the merits, the Carrier made out a *prima facie* case that the Claimant had been less than factual in his belated injury claim report of June 3, 2005. On balance, however, particularly in light of his long years of service, we conclude that the penalty of outright dismissal must be modified to a suspension without pay for time served, with attendant adjustment of the Claimant's personnel records.

AWARD

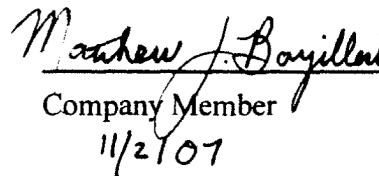
Claim sustained only to the extent indicated in the Opinion.



Nancy Faircloth Eischen, Chair



Union Member 11-2-07



Company Member
11/2/07