

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 1, 1999 Agreement, the following will serve as our appeal of the discipline assessed to BMW employee, J.W. Canty, ID#*****, as a result of the hearing held December 6, 2005 in Palm Beach Gardens, FL.

For the reasons stated herein and the objections set forth at the hearing, Mr. Canty's personal record should be cleared of the charge letter and all matter relative thereto and he be made whole for all losses suffered, by the Carrier's actions.

OPINION OF BOARD:

J. W. Canty (Claimant) was hired by Carrier in the Engineering Department on January 12, 1999. At all times relevant to this issue, the Claimant was assigned as a Basic Track Foreman (Flagging Foreman), headquartered at Fort Lauderdale, FL.

The record demonstrates that on November 1 and 7, 2005, Claimant Canty did not report for work as assigned, nor did the Claimant contact his Roadmaster as required by Rule 26 of the June 1999 Agreement between the Parties. Due to Claimant's unexplained/unauthorized absence, Carrier

reviewed Mr. Canty's attendance history, noting that the Claimant was also absent, albeit Absent with Permission, on August 1, 2, 15, and 31; as well as September 28 and October 7, 2005.

Due to the Claimant's "developing pattern of excessive absenteeism", Carrier directed Mr. Canty to attend November 29, 2005 investigation on charges he was "absent from your assignment without permission. Your action in connection with this matter appear to be a violation, but not limited to, CSX Operating Rule GR-1". Claimant was also charged with "possible excessive absenteeism, in that you were absent from duty six (6) days during the months of August, September, and October, 2005". Following one postponement, the investigation was held on December 6, 2005, with both Claimant and his representative in attendance. Thereafter, in a letter dated December 24, 2005, the Claimant was informed that he had been found guilty of the charges so noted above, and assessed a five (5) day actual suspension.

By letter dated December 29, 2005, the BMW Vice Chairman noted that Roadmaster Hampton was the charging officer and, that "The discipline letter was drafted over the name of J. F. Bippus, but was actually signed in the hand of Mr. Hampton." Specifically, the Vice Chairman maintained: "Plainly put, the transcript reveals that an Assistant Roadmaster, Mr. Hampton, drafted the charge letter based solely on speculation and issued the discipline letter based on the same speculation, plus unsupported allegations for the years 2003-4".

With respect to the merits of the dispute, the Vice Chairman protested the discipline assessed to Claimant alleging that: "The Carrier totally and completely disregarded the good-faith provisions of the Agreement and its actions border on a unilateral change." The Vice Chairman further averred that the transcript from the December 6, 2005 hearing "clearly shows that Claimant's ability to communicate with the Carrier was adversely affected by the hurricane that struck the area." The

Vice Chairman further opined: "While Rule 26 of the Agreement does recognize the employee's obligation to contact Carrier when he is unable to report for work, it also recognizes circumstances beyond the employee's control. In this instance there existed a problem due to the hurricane".

In its denial to the Vice Chairman's correspondence, Carrier maintained that: "It is not improper *per se*, if Mr. Hammond did draft the discipline letter." In that connection Carrier further noted that the Organization provided no proof which proved that Mr. Bippus, Director South Florida Corridor Project, did not sign the December 24, 2005 letter of discipline.

Regarding the merits, Carrier maintained that: "There is sufficient evidence from the testimony and evidence presented at the hearing to support the Carrier's position that the claimant is guilty as charged. Mr. Canty's absence the day after being off on vacation, preceded by two rest days and another vacation day, is suspect. Additionally, his absence on November 7th was the day after a rest day. This indicates that a possible pattern of absenteeism may be developing, whether it is with or without permission." When the parties were unable to resolve the dispute on the property, it was listed before this Board for resolution.

Reported cases make it clear that Carrier allows mixing of roles of the charging officer, hearing officer and disciplinary assessment officer, at its peril; but this line of authoritative precedent also holds that a Claimant seeking reversal of otherwise justified discipline on the basis of such role-mixing must demonstrate some actual bias or some other violation of contractual due process rights. In this case the Organization's threshold due process raises the troubling charge that Carrier allowed the charging officer to review the evidence, determine guilt, and assess the penalty. If proven by a preponderance of evidence that might well have provided grounds for reversal. But in the final analysis there is not sufficient record evidence to support this serious due process defect allegation.

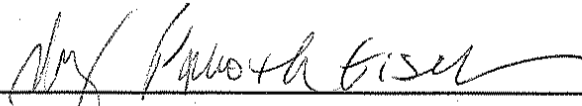
Turning to the merits of the dispute, the record demonstrates that Claimant Canty was Absent with Permission on August 1, 2, 15 and 31; as well as September 28 and October 7, 2005. Additionally, the Claimant was absent, without permission, on both November 1 and 7, 2005. It is not disputed that the Claimant made no efforts or attempts to contact the Carrier on either of those dates (November 1 and 7) to report that he would not be at work, nor is it disputed that on November 7, 2005, a 707 authority was cancelled because the Claimant failed to report for work and a replacement could not be found. According to the Claimant's testimony, on November 1, 2005, he was unable to call the Carrier to report his intended absence "due to the hurricane", he was unable to explain his failure to report off from work on November 7, 2005, thereby rendering Claimant's explanation regarding November 1, self-serving at best.

In that connection, the record demonstrates that the Claimant was absent the day after being off for vacation, preceded by two (2) rest days and another vacation day. Additionally, Claimant's absence, sans permission, on November 7, 2005 was the day after a rest day. We conclude that Carrier adduced sufficient evidence to support its conclusion that the Claimant has enjoyed a "pattern of taking long week ends", a clear indication of a "pattern of absenteeism".

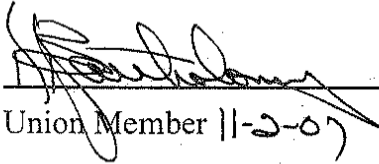
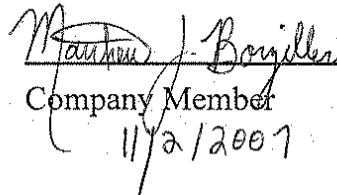
Finally, with respect to the discipline assessed in these circumstances, given Claimant's proven culpability, including his own testimony at the hearing, an imposition of a five (5) day actual suspension cannot be considered arbitrary, capricious, or otherwise unduly harsh. Therefore, this claim must be denied.

AWARD

Claim denied.



Nancy Faircloth Eischen, Chair


Union Member 11-2-07
Company Member
11/2/2007