

PUBLIC LAW BOARD NO.7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION AFFILIATED
WITH THE TEAMSTERS RAIL CONFERENCE

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

The above concerns the dismissal of BMW SPG Foreman J. L. Sapp, ID#*****, by Mr. L. E. Houser in his letter of December 5, 2005..., such action being unwarranted and in response to the hearing held on November 15, 2005, for the reasons stated herein, those put forth in our appeal letter of December 13, 2005, and the objections raised at the hearing, the charge letter and all matters relative thereto should be removed from Mr. Sapp's personal record, and he should be immediately returned to service and be made whole for all losses suffered.

OPINION OF BOARD:

J. L. Sapp (hereinafter referred to as "Claimant") was hired by the former Louisville and Nashville (L&N) Railroad, a component property of CSXT. At all times relevant to this dispute, the Claimant was assigned as a Production Foreman (position 5ACT-060) in Carrier's Engineering Department on the Atlanta Service Lane Work Territory.

On May 11, 2005, CSXT Special Agent T. J. Duncan was contacted by Special Agent Seals of the Tennessee Highway Patrol, who informed the Agent Duncan of a Search Warrant to be executed on the Claimant's personal property, involving "a number" of items allegedly stolen from CSXT property; including a trailer used to transport large pieces of equipment, such as a backhoe.

Of note, upon further investigation it was determined that the Claimant had accumulated approximately twenty-five thousand dollars (\$25,000.00) worth of CSXT material(s).

As a result, by letter dated May 26, 2005 the Claimant was informed that he had been charged with "conduct unbecoming an employee of CSX Transportation, the unauthorized removal and theft of CSXT property. Your actions in connection with this matter indicate possible violations of, but not limited to, CSXT Operating Rules, General Rules A and L, and General Regulations GR-2 and GR-2A". Claimant was further instructed to attend a formal investigation scheduled for June 6, 2005.

Following two (2) postponements, the hearing was held on November 15, 2005, with Mr. Sapp and his representative in attendance, after which Carrier determined that the Claimant was guilty as charged, and by letter dated December 5, 2005, Mr. Sapp was dismissed from Carrier service.

Of note, and pertinent to this issue, the Organization asserted that on December 13, 2005, it sent an appeal letter to Carrier, however, Carrier maintains it never received same. Accordingly, in a letter dated October 2, 2006, the Organization appealed the alleged December 13, 2005 claim, stating that: "This case was listed for discussion at the conference on February 14-15, 2006, but was not discussed. Your representative, Mr. Tolin, advised that he was not given the file by the System Production Group....., and was not prepared to discuss the case. I offered my file for him to review, but he declined stating that he would talk with Mr. Jensen when he got back to Jacksonville, and one or the other of them would get their hands on the file and call me to discuss. They did not call". The Organization went on to assert that it had sent an appeal to Carrier on December 13, 2005, further noting that: "You are aware of the time limit requirements with a request for conference.

This case was properly listed for conference (appeal hearing) for February 14-15, 2006. The case listed again for July 11-12, 2006. To this day you have not responded to our appeal letter nor moved to discuss the case with us". As remedy, the Organization asserted that Carrier must now pay the claim as presented, due to Carrier's failure to respond to the claim in a timely manner.

Carrier's Labor Relations Director Wilson responded to the Organization's October 2 correspondence denying any default on Carrier's part. Specifically, Carrier averred that: "As the Organization indicated in its October 2, 2006 letter, the Carrier was unable to conference the file at the February 14-15, 2006 conference because no file had been established because the Carrier had not received an appeal of Mr. Sapp's dismissal from the Organization. The Carrier had no reason to prepare a file and a file number because no file had been received in Labor Relations".

Moreover, "the Organization states that the case was listed for the July 11-12, 2006 conference, but was not again discussed. Again, as indicated by the Organization's list, no Carrier file number was listed, providing further evidence that no appeal from the Organization had been received in Labor Relations. The Carrier is unable to conference a file without an appeal and other sufficient information. The Organization is well aware that no file had been set up as indication in the response to the Organization's request for Carrier file numbers".

At the outset, the Organization asserted that it had sent an appeal letter to Carrier on December 13, 2005, while Carrier steadfastly maintained that it never received the appeal. Nonetheless, the matter was placed before this Board for resolution. Therefore, any procedural arguments regarding the alleged December 13, 2005 appeal letter, or lack thereof, are not properly before us, and will not be addressed further.

Turning to the merits of the dispute, on May 12, 2005, "as a result of an ongoing Tennessee Highway Patrol investigation regarding stolen property", a search warrant was issued for Claimant's personal property located in Pikesville, TN. When the aforementioned Special Agents arrived at the Claimant's home, they discovered the following Carrier property: an equipment trailer, numerous cases of oil and transmission fluid, a track cart, a pick-up tool box with assorted tools, two portable derailleurs, three mobile/portable radios, two track levelers, assorted shovels, handles, pry bars, PROTO brand electric tools, one STIHL band rail saw, two backhoe buckets, as well as a box of paper towels, safety glasses ear plugs and gloves. Additionally, Special Agents advised Carrier that their investigation "is continuing".

With regard to the stolen Carrier property, the Claimant at first maintained that he simply intended to "borrow" the equipment trailer, and that as a member of a System Production Team it was not "unheard of" to have certain tools delivered to his home. In fact, at one point during the hearing, Claimant actually maintained that a number of the more portable items, such as tools and tool boxes, had literally "fallen off the back" of his truck.

It is unfortunate that such a long tenured employee has ended his railroad career in this way.

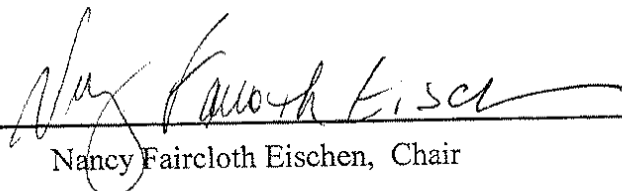
However, theft of company property is an extremely serious offense. Employees who engage in theft of company property irrevocably shatter the integrity and trust that is the essence of the employer-employee relationship. For that reason, Boards such as this, with jurisdiction over cases involving theft on the railroad, and throughout all industries, routinely uphold dismissal of employees who engage in such inappropriate conduct. The nature or extent of the theft is irrelevant. Nor is their alleged intent, such as Claimant Sapp, who maintained that he was "unaware" it was inappropriate for him to remove various articles of Carrier property. Given the irrefutable record

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evidence, Carrier's imposition of the discipline of dismissal cannot be considered unduly harsh, inappropriate or otherwise unreasonable in the circumstances. Therefore, this claim must be denied.

AWARD

Claim denied.

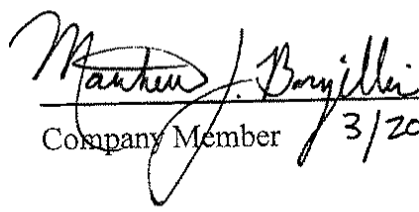


Nancy Faircloth Eischen, Chair



Union Member

3-20-08



Company Member

3/20/2008