

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 CSXT/BMWE Agreement, dated June 1, 1999, the following will serve as our appeal of the discipline assessed to BMWE represented member, V. J. Ash'Shaheed, as a result of a formal investigation which was held October 11, 2007, in the conference room of the Microtel Inns & Suites located at 4839 Massachusetts Blvd., College Park, GA 30337.

For the reasons stated in this appeal and at the beginning of the hearing, it is respectfully requested that the charge letter, and all matters related thereto, be removed from Mr. Ash'Shaheed's personal file and he be returned to the employment of CSX Transportation, and made whole for all losses suffered as a result of the Carrier's actions.

OPINION OF BOARD:

In the companion case which we decided in Award No. 43, we sustained the Carrier's June 21, 2007 termination of the employment of Mr. Vincent J. Ash'Shaheed ("Claimant"), on proven charges that he had violated CSX Operating Rule A, CSX Operating Rule GR-2 (parts 4 and 7) and CSX Safeway Rule GS-5, by failing to timely report an alleged injury and/or falsely reporting an alleged back injury. Those cited rules state:

General Rule A "Employees must know and obey rules and special instructions that relate to their duties. When in doubt as to the meaning and application of any rule or instruction, employees must ask their supervising officer for clarification.

GR-2 All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:

* * *

4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent

7. Make any false statements

* * *

GS-5. Reporting of Injuries or Incidents (CSX Transportation April 10, 2007 System Bulletin Safe Way GS-5 us changed to read as follows:

A. On Duty Injuries Any employee experiencing an on-duty injury must report the injury to a supervisor at the time of the occurrence or prior to leaving the property on the day of the occurrence so that prompt medical treatment may be provided. A Form PI-IA must be completed by the employee reporting the injury. (Exception: An employee departing the property to obtain urgent medical attention for a serious injury must report the injury to a supervisor and complete the Form PI-IA as soon as practicable.)

B. Medical Attention Employees must immediately notify their supervisor of the decision to seek medical attention as a result of an on-duty injury. This requirement is intended to facilitate work coverage and timely regulatory reporting.

C. Off Duty Injuries Employees who sustain an off-duty injury that will in any way affect performance of their duties must report the injury to their supervisor prior to reporting for duty,

D. Information Concerning Injuries Employees with knowledge or information concerning an injury or accident to themselves, another employee or nonemployee must report the information to their supervisor at the time of the occurrence so that emergency assistance and proper medical care can be promptly provided,

E. All Incidents Employees must immediately report to the train dispatcher or supervisor all incidents involving equipment and any other incident involving loss or damage to property

During the June 1, 2007 investigation into those charges, for which he was terminated on June 21, 2007, Claimant Ash'Shaheed revealed that on his application for employment with the Carrier in 2004 he failed to report that he had sustained a disabling on-the-job injury during his prior job with United Parcel Service ("UPS"). Approximately two weeks after his June 21, 2007 discharge, by letter dated July 9, 2007, the Carrier summoned Mr. Ash'Shaheed to attend another investigation into the following charge:

... falsifying an application to gain employment, and possible violations of, but not limited to CSX Operating Rules - General Regulation A and General Regulation GR-2.

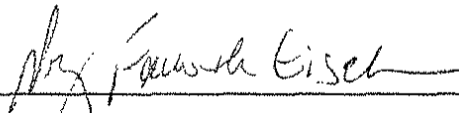
After postponements at the request of both the Carrier and the Organization, the hearing was held on October 11, 2007, with Claimant Ash'Shaheed's failing to appear but with his duly authorized BMW representative in attendance. The Hearing Officer proceeded *in absentia*, over the strenuous objections of the Organization's representative. From the undisputed evidence and testimony presented Carrier determined Claimant Ash'Shaheed was guilty as charged and issued him another dismissal from service letter, dated October 31, 2007.

Leaving aside questions about the redundancy and effectiveness of conducting a formal investigation into misconduct previously admitted by an already discharged employee, we find no fatal procedural violation in the carrier proceeding *in absentia* because the record plainly shows that the Claimant was given adequate notice and opportunity to appear but boycotted the hearing. Nor is there any question in the record that he did fail to reveal to the Carrier, during pre-employment screening, that he had sustained on-the-job injuries in his immediate prior employment. We concur with the majority view held among arbitrators that willful and deliberate falsification or misrepresentation of material facts on the employment application, or other employment documents, generally is grounds for discipline, if the following conditions prevail: 1) The misrepresentation was willful or deliberate; 2) The misrepresentation was material to the employment at the time it was made and material to the employment at the time of the disciplinary action; and 3) The employer acted promptly and in good faith upon discovery. Tiffany Metal Products Manufacturing Company, 56 LA 135 (Roberts, 1971).

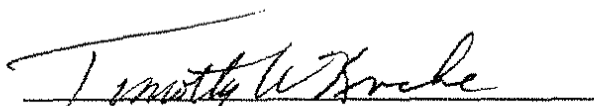
There can be no serious doubt that the Carrier rule that applicants for employment and employees refrain from falsifying documents is reasonably related to the operation of any business and is a reasonable performance expectation of any employee. An applicant has an obligation to make full and honest disclosure because, absent some contractual or statutory limitation, none of which applies here, the Employer has a generally unrestricted right to make hiring decisions. *See St. Marie's Gopher News*, 93 LA at 738, 743 (Lipson, 1989); *see also Peoples Gas System*, 91 LA 951 (Sergent, 1988). For all of these reasons, we hold that the Carrier need not tolerate employee dishonesty, nor does this Board condone willful and deliberate falsification of employment documents by applicants or by employees.

AWARD


Claim denied.



Nancy Faircloth Eischen, Chair



Union Member Oct. 23, 2008



Company Member Oct. 23, 2008