

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF	)	
MAINTENANCE OF WAY EMPLOYEES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	CASE NO. 8
vs.	)	AWARD NO. 8
	)	
CSX TRANSPORTATION, INC.	)	

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 discipline assessed to BMWED employee A.C. Wilson, ID#570531, as a result of the hearing held November 14, 2006 in the CSX Depot at 110 Depot Street, Manchester, GA.

For the reasons stated, as well as our numerous objections at the hearing, it is respectfully [requested] that the charge letter and all matters relative thereto be removed from Mr. Wilson's personal file, and he be made whole for all losses suffered as a result of the Carrier's actions.

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant, A.C. Wilson, has been employed by the Carrier since June 2, 2003, and at all relevant times was assigned to the position of Production Trackman on a System Production Team (Position 5XT2-080). On October 27, 2006, T.B. Weaver, Carrier's Manager System Tie Teams, charged Claimant to attend a formal investigation. Following the investigation, the Carrier found Claimant guilty of failing to follow specific instructions, failure to protect his assignment and being absent without permission on October 24 and 25, 2006, and assessed him a 20 calendar-day suspension.

The essential facts of this case are not in dispute. Thomas B. Weaver, Carrier Manager, System Production Team, testified at the investigation that on October 19, 2006, Claimant was working for him as an Extra Trackman, removing tie plates from old

ties. He testified that at approximately 1630 hours Claimant told Foreman David White, and then Mr. Weaver, that his shoulder was sore and his hand was swollen. He stated that Claimant asked if they could make out an injury report as a precautionary measure, and he inquired of Claimant whether he needed medical attention. Mr. Weaver testified that Claimant replied that he did not, that he believed he would be all right. Mr. Weaver stated that they then filled out the appropriate paperwork.

Mr. Weaver further testified that during this conversation he informed Claimant that if anything changed, and he needed to see a physician, it was necessary for him to so inform Mr. Weaver immediately. He stated that because Claimant had indicated that he did not need medical attention, the incident was non-FRA reportable, but it would become reportable if Claimant sought medical attention. Mr. Weaver stated that he checked that Claimant had his contact information, including his telephone numbers, and again informed Claimant that the rules required that he contact Mr. Weaver if he needed medical attention. He testified that he also told Claimant that there were severe consequences for failing to follow the rule. Mr. Weaver also testified that he never received any medical documentation from Claimant.

Claimant testified at the investigation that during the process of pulling the plates he noticed some swelling in his left shoulder, a sharp pain, and tightness in his left hand. He stated that he took some Tylenol, hoping it would ease the problem, but at the end of the day he met with Mr. Weaver in his truck and filled out an incident report. He further stated that Mr. Weaver asked him if he wanted to go to the emergency room, and he replied that he would see how things progressed over the weekend. Claimant acknowledged that Mr. Weaver instructed him to contact him immediately if anything changed.

Claimant testified that when he awoke the following morning he still had some severe pain, so he contacted a doctor for an appointment but was unable to obtain one on short notice. He testified that he returned to work Monday, and was assigned light tasks, and that at about 1:30 to 2:30 he received a message from his wife that the doctor's office had called and he could be seen the next day. Claimant stated that at the end of the shift he told Foreman White that he had the appointment the following day, would not be at work, and would notify him of the outcome of the appointment. He stated that Mr. White instructed him that he needed to notify Mr. Weaver. He further stated that he saw Mr. Weaver operating equipment and attempted to attract his attention but was unable to. He stated that he felt since he had notified management that he had an appointment that was all he needed to do.

Claimant further stated that following his doctor's appointment on Tuesday, the doctor requested that he stay off work and obtain therapy, so he called Mr. Weaver and left a voicemail. He stated that when he finally connected with him, Mr. Weaver asked why he had not notified him of the change, and Claimant replied that he was not aware that deciding to obtain medical treatment was considered a change.

The Carrier first asserts that all of the Claimant's procedural rights were fully protected and the hearing was conducted in a fair and impartial manner. On the merits, the Carrier asserts that it demonstrated, with substantial evidence, that Claimant violated several Carrier Rules, especially when he failed to properly notify his supervisor of his intended absence after being twice instructed to do so. The Claimant, the Carrier states, clearly understood the directions and chose to ignore them. Although the Carrier acknowledges that Claimant denied any wrongdoing, the Carrier points out that the hearing officer chose to credit instead the testimony of the Carrier's witnesses, and it is well established that such credibility determinations should be upheld by this Board. For these reasons, the Carrier concludes, Claimant's guilt was established by substantial evidence.

Given the severity of the offenses, the Carrier urges, the 20-day suspension was proper and appropriate. The Carrier's right to enforce attendance regulations is long-established, it points out, and numerous awards support discipline of employees who absent themselves from the workforce. The Carrier points out that as an act of leniency it allowed Claimant to serve his suspension while he was on medical leave and unable to work. For these reasons, the Carrier concludes, the claim should be denied.

The Organization contends that the Claimant is a diligent and hard-working employee who complied with the rules and received permission for his actions. The discipline assessed, a 20-day suspension, is, the Organization asserts, very harsh and should be overturned.

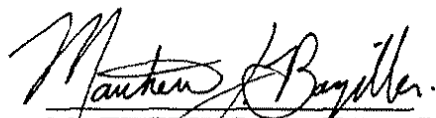
We have carefully reviewed the record in its entirety, and conclude that substantial evidence supports Claimant's guilt of these charges. First, we find that there are no procedural issues which interfered with Claimant's right to a full and fair investigation. On the merits, the record shows that the Claimant was instructed, on more than one occasion, to notify Mr. Weaver if anything regarding his medical situation changed and if he decided to see a doctor, and that he did not do so. The evidence also supports the conclusion that Claimant never received permission to be absent. Thus, his guilt has been proven.

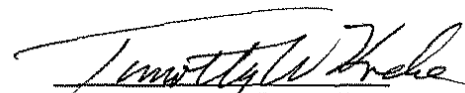
In light of the charges proven, we cannot find the penalty determined by the Carrier excessive, especially given the fact that Claimant was allowed to serve his suspension while he was off work due to his injury, and thus lost no time. Therefore, the claim will be denied.

AWARD

Claim denied.


JACALYN J ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member


TIMOTHY KREKE
Organization Member

Dated this 5th day of June, 2008.