

PUBLIC LAW BOARD NO. 7104

AWARD NO. 31

CASE NO. 31

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Machine Operator John M. Beverly for violation of CSX Operating Rules General Rule A, GR-2 and CSX Safe Way Rules GS-1 and GS-5 in connection with reporting a personal injury on August 14, 1007 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File D21510407/2008-012489).
2. As a consequence of Part 1 above, we emphasize that Mr. Beverly be exonerated. The August 19, 2007 charge letter should be stricken from his record and Mr. Beverly should be paid all straight time and overtime that he would have made had he not been terminated by the Carrier and all fringe benefits re-instated along with all seniority dates back on all seniority rosters."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed from all service for violating Carrier rules associated with falsifying a claim of work-related injury. At the time of the incident in question, claimant had more than 31 years of service. His service record did not contain any instances of prior similar conduct.

Our review of the record does not reveal any procedural irregularities of significance that require comment by us. On the merits, while the record does not support the Carrier's opinion that claimant admitted falsifying an injury while on duty, we do find the record to contain substantial evidence in support of its determination that claimant did commit the alleged falsification.

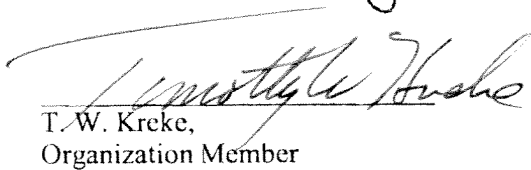
Given the nature of the misconduct involved, we do not find that the Carrier's disciplinary

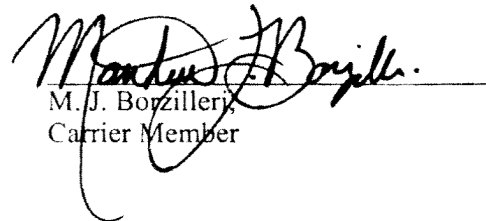
action was excessive or in any manner unreasonable. Accordingly, we have no proper basis for disturbing the Carrier's assessment of discipline.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


T. W. Kreke,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: May 28, 2010