

PUBLIC LAW BOARD NO. 7104

AWARD NO. 42

CASE NO. 42

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference**

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

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

1. The dismissal of Truck Driver Bruce E. Parker for violation of GR2-5, GR2-7 and GR15 in connection with being absent without permission on October 11, 2007 and providing false information concerning the pay sheet for that date is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier File: 2007-001568).
2. As a consequence of the violation in Part 1 above, Mr. Parker shall be immediately reinstated to active service, that he be compensated for all earning opportunities and other benefits deprived him and that his record be cleared of the charges and results therefrom."

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 and a co-worker both failed to report for work on October 11, 2007. Their foreman, who normally prepares the payroll information for the gang, was also absent that day due to a death in his family. Upon his return, the foreman mistakenly showed both employees to have been present and working on October 11th. Neither employee properly carried out their individual responsibility to check the payroll information for accuracy. Consequently, they were both technically guilty of allowing an inaccurate payroll record to be submitted. A Carrier official caught the error and neither

employee actually received pay for a day not worked.

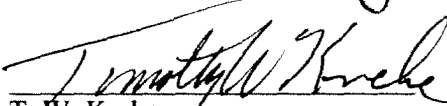
Careful review of the record reveals substantial evidence confirming claimant's responsibility for his absence as well as the submission of the inaccurate payroll information. However, the record also portrays unique mitigating circumstances that call for modification of the Carrier's disciplinary penalty. Given these factors and the unfavorable aspects of claimant's prior work record, he should be offered reinstatement to his former employment status, with seniority and other attributes of that status unimpaired, but without any back pay or other economic benefits associated with the period of time he has been out of service.

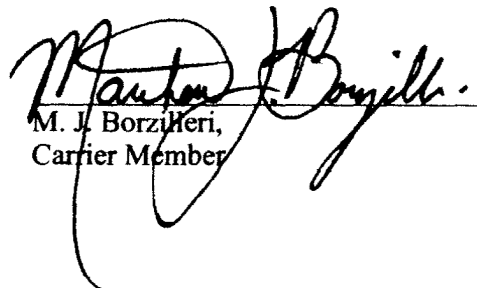
The Carrier is further directed to comply with this Award within thirty (30) days of the date shown below.

AWARD:

The Claim is sustained in accordance with the Findings.


Gerald E. Wallin, Esq., Chairman


T. W. Kreke,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: 12-16-2009