

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYEES' DIVISION
(
(CSX TRANSPORTATION, INC.

THE CHARGE and the INVESTIGATION

The Claimant, K. R. Crews, has been employed by the Carrier for over 34 years. In 1994 he left the bargaining unit and became a manager. His most recent management position was that of Manager of Operating Practices and Training for the Engineering Department. In late January, 2008, the Carrier conducted an internal audit of the Claimant's procurement card purchases and expense account charges.

The audit revealed that between February 1, 2007, and December 31, 2007, the Claimant submitted charges on his expense account totaling \$4,000.06 for items that he also charged on his company procurement card. He received and accepted reimbursement for the \$4,000.06 although the same charges were paid by the Carrier when submitted as procurement card purchases. In addition, some of the purchases through the procurement card appeared to be for personal use.

Further the Claimant turned in twice for payment the same expense item in the amount of \$544, and three times, the same item in the amount of \$731.22. The Claimant received payment from the Carrier in the amount of \$2,006.44 for the multiple expense charges for the same items on his expense reports. Altogether the fraudulent expense charges submitted to the Carrier by the Claimant, and paid to him by the Carrier, came to \$6,006.50. That amount represented 12 separate fraudulent entries on the Claimant's expense reports.

The Carrier's internal auditors met with the Claimant on February 1, 2008, to

obtain an explanation from his of what appeared to be improper expense reports submitted by him. He was shown the documentation that the Carrier had reviewed. In the interview the Claimant admitted that he was reimbursed for personal purchases made with his procurement card and that he falsified his expense reports. He claimed that he did so because of financial pressure caused by family medical expenses not covered by his medical insurance plan. When the Chief Engineer Maintenance of Way walked the Claimant out after the audit meeting, the Claimant told the Chief Engineer that he forged his supervisor's signature approving his procard statements containing duplicate charges.

On February 5, 2008, the Carrier notified the Claimant that as "a result of the recent Ethics investigation into [his] use of a company Procard and [his] personal expense account, including [his] personal interview . . ." he was being removed from his non-contract position effective immediately. "The letter also stated, "[T]his is to advise you that you are hereby withheld from service under your Collective Bargaining Agreement with formal charges to follow."

By letter dated February 19, 2005, the Carrier directed the Claimant to attend an Investigation on March 4, 2008, "to develop the facts and place your responsibility, if any, in connection with several incidents wherein you appear to have fraudulently acquired over \$6,000 through the manipulation of Pro-card receipts and expense account claims for unexpended funds." The letter stated that "it was discovered during a corporate audit of 2007 Pro-card receipts and Expense Reports that there were discrepancies wherein it appears you used your pro-card for purchases and also requested reimbursement of the same items through your expense report."

The Claimant, the letter continued, was "charged with conduct unbecoming an employee of CSX Transportation, dishonesty, and fraud." His actions, according to the

letter, appeared to be in violation of CSX Operating Rules -- General Rules A and L, General Regulations GR-2, GR-3, and GR-5--, the CSX Code of Ethics, and the CSX Policy on Expense Reporting.

At the Investigation held on March 4, 2008, the Manager and the Project Supervisor who conducted the internal audit involving the Claimant testified regarding the facts stated above. In response to the hearing officer's question to "tell us the facts in regard to this incident as you know them," the Claimant testified in full as follows:

Well all the exhibits that have been entered are accurate and I have had knowledge and have discussed with all the exhibits that have been entered. I did in fact have the interview with Frank Pelzer [Project Supervisor of Internal Audit & Compliance] and George Luiga [Manager IA&C] and we discussed the discrepancies in my expense account. I really don't have any disputes to the way the things are listed. I did admit a mistake on my part and at this time the only thing I want to mention is with Frank and George and my interview, George did ask if I would make restitution and pay it back which I did state that I would. I would like the record to show that I would make restitution and pay the amount that has been noted back to the company. Other than that that's all I have at this time.

In reply to questions by his representative, the Claimant stated that he has been employed by the Carrier since June, 1973, or 34½ years. He was asked whether he had ever had any problem with his expense reporting since he was an employee of CSX and answered, "No sir I have not."

Asked if he would make a statement in his own behalf, the Claimant gave the following statement:

I have been with the company going on 34½ years. I have been a dedicated employee. I became a manager in 1994. I have clearly an unblemished record always had my company's interest at heart. I felt I was a good honest employee. I have had one blemish now with just some bad judgment on my part as some [sic] to handle a personal situation. I regret fully the things that I've done against the company and would like to be able to make full restitution and say that it would never happen again. This company has treated me well for 34½ years and I have enjoyed my tenure with the company, and would like to finish until retirement if at all acceptable. Thank you.

Following the Investigation, by letter dated March 24, 2008, the Carrier notified the Claimant that it had determined that he was guilty as charged and dismissed him from service. The Claimant elected to appeal the discipline directly to this Board for expedited handling.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Carrier's internal auditors investigated suspected fraud on the Claimant's part in his procurement card purchases and his expense reports. The investigation indicated that the Claimant had submitted false expense reports amounting to approximately

\$6,000. When interviewed about the auditors' findings, the Claimant admitted his guilt and offered to make restitution. He claimed that he did it because of financial difficulties brought on by uncovered family medical expenses.

The Claimant was given a fair hearing following a thorough internal investigation that turned up evidence that he had submitted fraudulent expense reports requesting reimbursement in excess of \$6,000 that he was not entitled to and improper purchases by the Claimant on his procurement card. As a result he was dismissed from his managerial position. That decision is outside the purview of the collective bargaining agreement and is not before this Board for review.

Apparently the Claimant now seeks to return to a contract position on the basis of retained seniority rights under the Agreement. To prevent that from happening the Carrier filed charges against the Claimant, as detailed above, and, following an Investigation, determined that he was guilty of the charges against him and dismissed him from service.

It has been observed that, as a general rule, people do more harm to themselves than is inflicted on them by others. It is sad when an employee with over 34 years of service so severely breaches the trust that his employer has in him. This was not a single instance of poor judgment but 12 separate incidents over a period of a year. These were dishonest and fraudulent acts of a serious kind that are generally considered cause for discharge. It was conduct, that, in addition to being covered by the Code of Ethics and the Policy on Expense Reporting, was self-evidently seriously violative of the norms of acceptable industrial conduct.

The question before this Board is not whether the Board would have imposed the same penalty had this case come before it initially for decision. The question is whether

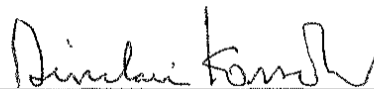
the penalty determined by the Carrier is within the reasonable range of discretion of management in administering discipline for conduct of the kind here involved. The Claimant misappropriated funds in the amount of \$6,000 from the Carrier in a series of expense report transactions over a period of a year and made purchases of goods for his personal use on his company-issued procurement card. Such violations are destructive of the trust between employer and employee that is critical for the employer-employee relationship and the successful operation of the company's business. Under these circumstances the Carrier was entitled to conclude that the Claimant should not be permitted to exercise seniority to return to a contract position and that dismissal was appropriate. See Third Division Award No. 39021.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
August 17, 2008