

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated August 11, 2008, J. F. Castle, Engineer Track instructed R. B . Honeycutt ("the Claimant") to attend a formal Investigation in the conference room at the CSX Transportation Division Office in Florence, South Carolina on August 21, 2008, "to determine the facts and place your responsibility, if any, in connection with an August 1, 2008 incident involving the attempted sale of scrap steel that was . . . property of the WSSB Railroad. An investigation was initiated," the letter continued, "after a phone call was received from the Albermarle, NC. police department that you had brought in scrap steel material and attempted to sell it to a local scrap company." The letter charged the Claimant "with conduct unbecoming of a CSX employee, dishonesty, unauthorized possession and use of company materials and possible violation of: 1. CSX Operating Rule A 2. CSX Operating Rule L 3. CSX Operating Rule GR-2 (part 4) 4. CSX Ethics Policy." The letter stated that because of the seriousness of the matter the Claimant would be held out of service pending the outcome of the Investigation. By mutual agreement of the parties the hearing was rescheduled to August 26, 2008.

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 Claimant began his employment with the Carrier on February 26, 2007, and held the position of Machine Operator when the events giving rise to this Investigation occurred. The Winston-Salem Southbound Railroad is a subsidiary of CSX Transportation, Inc. and has adopted the same rules for employees as the parent company. The Claimant was employed at WSSB Railroad.

Worn-out iron and steel material that is no longer usable is placed in a scrap bin, and when enough is accumulated is sold by the Carrier as scrap. The material includes such items as discarded tie plates, angle bars, and binders. The Claimant asked for and was given August 1, 2008, as a day off to take care of personal business. In the morning on August 1 he went to the Carrier's High Rock office to drop off his dirty uniforms. After he dropped off his uniforms he drove his pickup truck to the scrap pile and loaded it with scrap material of the kind described above.

He then drove his pickup truck to a local scrap yard about 20 miles away. A police officer at the entrance to the scrap yard asked the Claimant what he was there to sell. He told him some old scrap metal. The officer asked the Claimant if he could look at the scrap. The Claimant permitted him to look, and the officer saw that it was railroad material. He asked the Claimant to drive his vehicle to the police department, and the Claimant followed the officer there. The officer asked for the name and telephone number of the Claimant's supervisor, and the Claimant gave him Roadmaster Harry Napper's name and phone number. The officer called Roadmaster Napper and informed him that the Claimant had gone to the scrap yard to sell railroad scrap. The Roadmaster spoke with the Claimant and instructed him to bring the scrap back to the railroad yard. The Claimant was released by the police without any criminal charges against him and returned the scrap to where he had taken it from.

On Monday, August 4, 2008, Engineer of Track John F. Castle interviewed the Claimant about the incident of the preceding Friday. After the interview he informed the Claimant that because of the seriousness of the matter he was removing him from service pending an investigation. He told him that he (the Claimant) would receive a charge letter and that an investigation would be held. Mr. Castle testified that he charged the Claimant with violations of four different rules or policies: Operating Rule A, which states that employees must know and obey the rules and special instructions that relate to their duties and ask their supervisor for clarification of any rule of which they are in doubt

as to the meaning and application; Operating Rule L, Section 1 of the General Rules and Regulations, which prohibits unauthorized possession, removal or disposal of any material from railroad property; Rule GR-2, part 4, which prohibits dishonest or disloyal conduct; and the CSX Ethics Policy, which includes the statement that employees are responsible to use good judgment to safeguard the Company's assets from misuse or waste and prohibits theft of company property. Mr. Castle testified that to his knowledge the railroad has not on occasion authorized an employee to obtain scrap and dispose of it.

Mr. Castle testified that he hired Claimant Honeycutt and that since Mr. Honeycutt was employed he has not had any trouble whatsoever from him. He did interview other people that the Claimant works with, Mr. Castle stated, including the Roadmaster, "and everyone of them to a man stated that Mr. Honeycutt was a good employee and their exact words were, 'He just made a mistake.'"

Roadmaster Harry Napper testified that the Claimant got the scrap from the scrap bin at High Rock, North Carolina. He explained that the material "is worn out so we stage it into a location to where once we get enough of it, we load it and take it to sell." The Roadmaster explained that from the scrap bin the scrap is loaded in a freight car or gondola, weighed, and sold. Using "a ballpark figure" based on what the officer said was in the truck, the Roadmaster stated, he came up with a valuation of \$2,000 for the scrap. Claimant Honeycutt, he testified, has been through a class in the Operating Rules in both 2007 and 2008.

Asked whether Claimant Honeycutt has given him any problems in the past since he was employed, the Roadmaster answered, "No." He testified that Mr. Honeycutt was a decent guy.

Claimant Honeycutt testified that he did not have permission or authorization to sell the railroad scrap to the scrap dealer. Asked, "Did you know it was against our rules and policy to perform such an act there?", he answered, "No sir. If I would have known it was anything like this, I wouldn't have even considered it." The Claimant was questioned by the hearing officer, whether it "has been a practice in the past to take this scrap from the scrap bin over to an outside concern, do you know?", and he answered, "No sir."

The Claimant's representative asked him, "When you loaded the scrap on the pick up truck in your mind, were you thinking that you were stealing?" He answered, "No sir. I didn't realize it until now." He was asked the follow-up question, "Did you realize after the fact that you had unauthorized possession of CSX scrap but you did not realize that before the fact?" He answered, "That's right."

Claimant Honeycutt made the following closing statement in his own behalf. "I'd just like to say that I've been with the railroad for 1-1/2 years now and feel like I made one mistake and I want to get past it and move on. I've learned from this mistake a lot and I'd like to further my career, and further my career teaching other people the mistake I've learned and I truly, really am sorry for what I did and I apologize and I just look

forward to getting past this and moving on with my career on the railroad.”

Following the close of the hearing, R. E. Moore, Jr., Division Engineer, by letter dated September 12, 2008, notified the Claimant that based on a thorough review of the transcript of the Investigation, “the facts support and confirm the charges against you. Due to the seriousness of these charges,” the letter continued, “the discipline assessed in this case is your immediate dismissal from the service of CSX Transportation and forfeiture of all rights and seniority.”

The Carrier contends that it rightfully determined that Claimant Honeycutt was guilty as charged when he attempted to sell railroad-owned scrap. His testimony, the Carrier argues, admitted his guilt and establishes that he violated the various rules listed in the charge. The Carrier notes that the Claimant specifically admitted that he sold the scrap without permission or authorization. The evidence, the Carrier asserts, was sufficient to establish that the Claimant was guilty as charged. The discipline assessed, the Carrier argues, was fully justified. The Claimant admitted that he took the Operating Rules and Safety Rules classes, the Carrier notes, and it cites a published award upholding the penalty of dismissal for selling scrap material of the railroad.

The Board has carefully considered the entire record and the Carrier’s arguments. The Board agrees with the Carrier’s position that theft is a very serious offense and that as a general rule dismissal will be upheld for such an offense. The Board is not satisfied, however, that the record establishes by substantial evidence that the

Claimant was aware that, even though the material was scrap and unusable, he was not permitted to take it out of the scrap bin. The record establishes that the Claimant has had classes in the operating and safety rules, but it does not show that in those classes, in job briefings, or in other conversation or instruction the Claimant was informed or placed on notice that unusable scrap was no different from any other property. It may not be removed without permission or authorization.

The Board notes that the Claimant expressly denied that he knew that it was against company rules and policy to take the scrap and sell it. (Tr. 26). He added, "If I would have known it was anything like this, I wouldn't have even considered it." No witness testified that the rules classes the Claimant attended covered the subject of removal of scrap. The Claimant further testified that he did not realize that what he was doing was stealing. (Tr. 30). Because of the short service of the employee, the fact that there is a natural tendency to differentiate scrap from usable material, and because of the absence in the record of evidence of actual or constructive notice to the Claimant regarding the prohibition of the taking of scrap material, the Board believes that it is credible that he was not aware that he was stealing company property. See Third Division Award No. 24736 (Robert W. McAllister).

The Board notes the specific finding in Award No. 31840, cited by the Carrier, that "Nor is there any doubt that all three individuals knew they were acting contrary to Carrier's reasonable rules and regulations." Had that been the case here, an award similar

to that in the cited case would have been justified. For the reasons stated above, however, and because the record reveals that the Claimant is considered by his fellow employees and supervision to be a good employee the Board believes that he should be given the benefit of the doubt regarding his knowledge that he was prohibited from removing the scrap for his personal use. In so concluding the Board also notes that the Claimant seems to be genuinely remorseful and sorry for what he did, which is also an important consideration in assessing discipline.

The foregoing being said, the fact nevertheless remains that the Claimant should have known better. He should have realized that if he could sell the scrap, so could the company. He should not be trading with the Carrier's property. He shall be reinstated to his former position but without back pay. His time off work shall be considered a suspension.

A W A R D

Claim sustained in accordance with the findings.

O R D E R

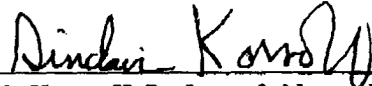
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the

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parties.

A handwritten signature in black ink, appearing to read "Sinclair Kossoff", written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
May 20, 2009