

BEFORE  
PUBLIC LAW BOARD NO. 7353  
CASE NO. 62  
AWARD NO. 62

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND	)	
TRAINMEN	)	PARTIES TO THE
vs.	)	DISPUTE
CSX TRANSPORTATION, INC.	)	

**STATEMENT OF CLAIM:**

*"Claim on behalf of Conductor P.S. Patterson, ID #223049, requesting reinstatement to active service with seniority unimpaired, compensation for all lost earnings, including lost wages for attending the investigation, since being terminated from active service June 16, 2011, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, and to have record expunged of all charges relating to the incident made the subject of the hearing held on May 18, 2011 at Russell, Kentucky."*

**FINDINGS:**

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 16, 2009, as amended, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that on April 26, 2011, the Claimant was sent a charge letter stating that an investigation was scheduled concerning his alleged failure to protect his assignment since November 7, 2010 and his attendant abandonment of his employment.

The investigation hearing was scheduled but postponed and ultimately held on May 18, 2011. The Claimant failed to attend this hearing, although his representative was there. A recess was taken to attempt to contact the Claimant. The attempt was unsuccessful. The hearing proceeded.

Following the close of the disciplinary investigation, on June 16, 2011 the Carrier dismissed the Claimant from service for violating CSX Transportation Operating Rules GR-1 and GR-2

These Operating Rules state (in relevant parts):

*"GR-1: Employees must report for duty at the designated time and place. Without permission from their immediate supervisor employees must not:*

1. Absent themselves from duty, ...

*GR – 2: all employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:*

...

*5. Willfully neglect their duty,*

..."

**Carrier's Position:**

The Carrier says that the Claimant was granted Family Medical Leave Act (FMLA) in December 2009. He took intermittent and continuous leave as provided under the FMLA from December 2009 to November 2010. They say that the Claimant was then advised that his FMLA leave had expired on November 7, 2010. To this date, the Claimant has not been back to work.

There is some contention over the letter canceling the Claimant's FMLA leave. His leave was canceled on November 7, 2010 but was apparently granted on December 3, 2010, in a letter dated December 22, 2010. The Carrier asserts that this was simply a typographical error. They say that the approval date should have been December 3, 2009.

They go on to argue that, even if the Claimant was unaware that his leave had expired until sometime shortly after December 22, 2010, he still failed to show up for work by the time the investigation notice went out on April 26, 2011.

With respect to the Organization's claim that the Carrier failed to give proper notice of the investigation to the Claimant, the Carrier points out that the Claimant signed for the charge letter on April 28, 2011 and for the letter postponing the investigation on April 29, 2011. Therefore, they say, the Claimant knew of the investigation and his failure to attend was of his own volition. They say that the Claimant's representative was there and that he had the opportunity to produce and examine evidence and witnesses. They therefore say that the Organization's procedural challenges must fail.

They say that their burden of proof has been met and dismissal is the justifiable disciplinary action.

**Organization's Position:**

The Organization says that there is much confusion over the FMLA dates. They say that the Claimant should have been able to rely on the letter saying that his FMLA leave was approved as of December 3, 2010. It would have then run for 12 weeks, until sometime in March 2011.

In the appeal process, the Organization claimed that the investigation was not fair and impartial since the Carrier had failed to give proper notice to the Claimant.

Finally, they say that dismissal is a penalty which is too harsh.

**Result:**

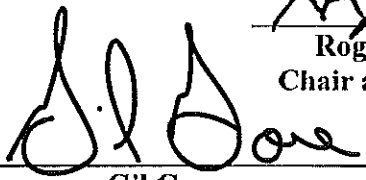

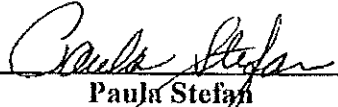
With respect to the procedural issue, this Board finds that the Claimant signed for the notice and postponement letters. He therefore knew of the hearing and failed to attend. There is no evidence of why this was so. He has every right to not attend. However, his failure to do so, without a valid reason, does not call into question the fairness of the hearing itself. This Board finds that there was no fatal procedural issue.

With respect to the merits of the case, even if this Board accepts that the FMLA letters generated confusion as to the proper leave dates, the Claimant's leave would have expired sometime in March 2011. He remained absent without authority for a further month. Thus, this Board finds that the Carrier has met its burden of proof and the Claimant is guilty of the charged offenses.

With respect to the quantum of discipline, the Carrier has the right to expect employees to show up for work. This is a fundamental tenet of the employment relationship. The Claimant offered no reason for his inability to work. He abandoned his job. Despite the most able arguments advanced by the Organization on behalf of the Claimant, the Carrier's subsequent conclusion that the employment relationship was at an end was fully justified.

**AWARD**

The claim is denied.

 _____ <b>Gil Gore</b> Vice-President Organization Member	 _____ <b>Roger K. MacDougall</b> Chair and Neutral Member	 _____ <b>Paula Stefan</b> Director Labor Relations Carrier Member
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Dated: 12/21/2012

At: Chicago, IL