

BEFORE  
PUBLIC LAW BOARD NO. 7353  
CASE NO. 63  
AWARD NO. 63

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

**STATEMENT OF CLAIM:**

*"Claim on behalf of Engineer P.B. Sadler, ID #201657, requesting reinstatement to active service with seniority unimpaired, compensation for all lost earnings since being removed from active service September 27, 2010, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, Stock and Bonus payments, and to have record expunged of all charges relating to the incident made the subject of the hearing held on November 10, 2010 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 September 26, 2010, the Claimant was scheduled to work his regular shift on a yard assignment advertised to go on duty at 1500 hours each day and scheduled to end at 2201 hours. On that day, he marked off duty at 2207. Police records indicate he facilitated a drug transaction at 2210. He was arrested at 2246 for drug trafficking. He was placed in the County Detention Center at 0018 hours on September 27, 2010. At 0128 hours, while still in custody, the Claimant called in to mark off sick. The Carrier sent a charge letter on October 4, 2010 for allegedly misrepresenting his status when booking off sick.

The investigation hearing was scheduled for October 12, 2010 but postponed twice at the request of the Organization. It was ultimately held on November 10, 2010 with both the Claimant and his representative in attendance. Following the close of the disciplinary investigation, on December 6, 2010 the Carrier dismissed the Claimant from service for violating CSX Transportation Operating Rule GR-2.

The Operating Rule states (in relevant parts):

*"GR-2: all employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public.*

*Employees must not:*

...

4. *Be disloyal, dishonest, insubordinate, immoral,*

...

7. *Make any false statements...*"

**Organization's Position:**

The Organization first raises procedural issues. They say that the numerous blanks in the transcript make it inaccurate and impossible for the Organization to mount a proper appeal.

The Organization says that the Claimant was off-duty, away from the workplace, observing his mandatory rest and not due to show up for work for some 13 hours when he called in sick. They also say that the Rule does not say that an employee must specify where he is when he calls in sick. He later called in to mark back up at 1222 hours with the intention of working his regular assignment. He missed no work due to his actions. Instead, he only missed work because the Carrier removed him from service. They say that incarceration does not mean he was not sick. In fact, they say, he had a doctor's excuse confirming his appointment at 1500 hours September 27, 2010.

Therefore, they say, the Carrier has failed to meet its burden of proof.

**Carrier's Position:**

The Carrier says that any gaps in the transcript are not fatal, since it contains ample evidence of guilt of the charge.

With respect to the merits, they say that the record is clear that the Claimant was not sick, but instead was dishonest when he called in to mark off sick, as he was incarcerated at the time.

**Result:**

With respect to the gaps in the transcript, this Board has thoroughly reviewed the complete record. We find that while there are a significant number of gaps, they are not so numerous, nor in such key positions, so as to render the record invalid. When taken as a whole, the record is sufficiently complete to allow the Carrier and this Board to reach a sound conclusion and for the Organization to make a full and proper defense (which they certainly did on behalf of this Claimant).

With respect to the merits of this case, the Organization raises very novel and interesting arguments. It is true that the Claimant does not have to reveal where he is when he calls to mark off sick. It is also true that one might get sick while in jail. However, taken as a whole, the Claimant's testimony strains all credulity. He was in jail when he called in sick. He had a doctor's note for an appointment at the time he was to go to work. However, he called to mark back up before that appointment, and presumably after he was released from custody. He can't have it both ways. This Board finds that taken as a whole, the record supports the conclusion that the Claimant was not truthful and, indeed, attempted to deceive his employer. As a result, the Carrier has met their burden of proof.

With respect to the quantum of discipline, it is well-settled that an employee owes a duty of honesty and integrity to his employer. This is a standard clearly not met by this Claimant. As a result, the Carrier was justified in dismissing the Claimant from service.

**AWARD**

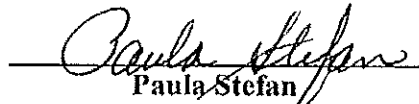
The claim is denied.



Roger K. MacDougall  
Chair and Neutral Member



Gil Gore  
Vice-President  
Organization Member



Paula Stefan  
Director Labor Relations  
Carrier Member

Dated: 12/21/2012

At: Chicago, IL