

BEFORE
PUBLIC LAW BOARD NO. 7353
CASE NO. 66
AWARD NO. 66

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

STATEMENT OF CLAIM:

"Claim on behalf of Locomotive Engineer G. Wise ID # 199416, requesting reinstatement to active service with seniority unimpaired, compensation for all lost wages, including lost wages for attending the investigation, since being terminated from active service June 1, 2011, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, and you have record expunged of all charges relating to the incident made the subject of the hearing held on May 6, 2011 at Lynchburg, Virginia."

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 March 30, 2011, the Claimant was an Engineer for the Carrier, with approximately 5 years of service. On that date, the Carrier says they discovered that the Claimant failed to attend a Rules Class on March 29 despite being instructed by a manager to mark off in a timely manner so that he could attend on that date and that he also failed to mark off to be rested to attend the investigation in this matter which was scheduled for March 30, 2011.

As a result, the Carrier scheduled an investigation for April 14, 2011. At the request of the Organization this investigation was rescheduled until April 27, 2011 by agreement. The Organization requested and received agreement to postpone the investigation once again to May 10, 2011, in a letter dated April 26, 2011, as the Local Chairman was scheduled to be on vacation until that time. However, in a separate letter dated April 27, 2011, the Carrier unilaterally changed the investigation date to May 6, 2011, when it was actually held. The Vice-Local Chairman was informed of this hearing on May 5, 2011 and did attend, with the Claimant. The Vice-Local Chairman complained about the unilateral change at the outset of the hearing but, after a short recess, the Carrier proceeded. Following the investigation, the Carrier dismissed the Claimant in a letter dated June 2, 2011 for violating CSX Transportation Operating Rule GR-2. The Organization appealed this discipline

through the proper process under the Collective Bargaining Agreement between the parties. The parties have been unable to resolve this issue and, after an on-property conference, they have placed the issue before this Board for adjudication.

At the outset, this Board notes that during the proceedings before this Board, the parties agreed that, due to a previous Board award involving this Claimant, unrelated to this dispute, the discipline assessed for the current case had been reduced to a 30 day suspension, without pay.

Article 30 of the Collective Bargaining Agreement between the parties is titled "Investigation and Discipline Rule – Procedures." Article 30, B, 1(c) states, with respect to the Investigation Notice that: "*The notice shall state the date, time and place the hearing is to be held which shall be not less than five (5) days after the date of notification [n]or more than ten (10) days after the date of notification unless otherwise agreed.*"

Article 30, B, 3 goes on to deal with postponements. It states, in full, that:

"3. Postponement of Hearing

Consistent with the provisions of 1(a) above for a fair and impartial hearing, postponement of the formal hearing may be requested by either party on reasonable grounds and consent shall not be unreasonably withheld. When an employee is on Administrative Leave pending an investigation, postponement by CSXT under this Article will not stop such payments, unless mutually agreeable.

Note 1: Reasonable grounds shall include but are not limited to, the Local Chairman's Union Business workload, his railroad work schedule, vacation and other compensated day or days scheduled.

Note 2: Should CSXT unilaterally postpone an investigation after the Local Chairman has marked off to represent an Engineer, the Local Chairman will be made whole for all lost earnings and reasonable expenses to attend the hearing." [emphasis added]

Thus, it is clear that, within certain parameters, the Carrier has the right to set the date, time and location of the investigation. However, it is also clear that once they agree to a postponement, they no longer have that unilateral right. They are bound by that to which they agree. They cannot then proceed to make a unilateral change to the hearing date. This is especially clear when the reasonable ground for the postponement was the vacation of the Local Chairman, as in this case.

The Carrier argued that the Vice-Local Chairman and the Claimant were both present for the hearing on May 6. However, this overlooks the fact that the Vice-Local Chairmen only discovered the hearing the day before. It also overlooks the fact the Carrier agreed to the postponement until the 10th – a mere 4 days later (which incorporated a weekend). No evidence was offered this Board about any form of prejudice the Carrier might have suffered by living up to its originally-agreed postponement. It appears that the Carrier simply had a change of heart and unilaterally decided to alter their agreement with the Organization.

Result:

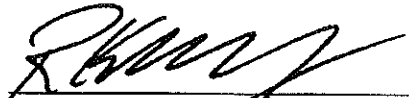
Agreements are bi-lateral in nature. They cannot be unilaterally changed, unless their terms so allow. There is no evidence that the unilateral hearing date alteration was acceptable. In fact the Organization objected to it in the hearing.

The Carrier has a qualified unilateral right to select a hearing date. The Organization has a right, under Article 30, B, 3 of their Collective Bargaining Agreement to request a reasonable postponement. Once granted, the Carrier has no unilateral right to alter it.


As a result of this procedural violation of the Collective Bargaining Agreement, this Board need not deal with the merits of this case.

AWARD


The claim (as amended in the arbitration hearing) is sustained.



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