

**BEFORE
PUBLIC LAW BOARD NO. 7353
CASE NO. 70
AWARD NO. 70**

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

STATEMENT OF CLAIM:

"Claim on behalf of Locomotive Engineer D. C. Lovely, ID #199550, requesting reinstatement to active service as a Locomotive Engineer with seniority unimpaired, compensation for all lost earnings since being removed from active service March 24, 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 April 21, 2011 at Martin, 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 in March 2011 the Claimant was attending training in the Carrier's Railroad Education and Development Institute (REDI) Center, for retraining as a Locomotive Engineer after returning to work from an extended absence. On March 24, 2011, the Claimant received a charge letter from the Carrier to attend an investigation concerning an alleged claim for pay on March 14, 2011 when he, in fact, did not attend the training class. The Claimant was removed from active service effective March 24, 2011.

As a result, the Carrier scheduled an investigation for April 1, 2011. It was postponed, by agreement, and ultimately held on April 21, 2011. Following the investigation, the Claimant received a Letter of Discipline dated May 19, 2011 dismissing him from service for violation of CSX Transportation Operating Rules GR-2 and GR-15.

Carrier's Position:

The Carrier says that the Claimant was attending training classes during the period in question. He submitted a timesheet requesting payment for the week beginning March 11, 2011 and ending March 18, 2011. The Claimant's pay was approved and he received payment. Subsequently, the Carrier discovered that the Claimant did not actually attend training on March 14. Instead, he marked off sick that date. They say that this is confirmed in his testimony during the investigation where he confirmed he did not attend class on March 14. They say that this admission meets the Carrier's burden of proof.

Operating Rules GR – 2 and GR – 15 provide, in pertinent part:

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

...

GR – 15: Time or wages must not be claimed on payroll except for work actually performed:

- 1. By the person whose name appears on the role;*
- 2. In accordance with agreed – to rules.*

Actual time that each member of a crew goes on and off duty must be shown on the payroll. This must be done, regardless of the assigned hours.

The Carrier says that the Organization's contention that the errors were simply keystroke mistakes are inconsistent with his marking certain dates with the letter "C" and certain dates with the letter "X", thereby demonstrating the ability to decipher the computerized time system.

Organization's Position:

The Organization takes no issue with the fact that the Claimant claimed time for attending class on March 14, 2011 but he did not attend class on that date. Indeed, the Claimant does so admit in his testimony. They say that the time claim for that date was put in in error.

The Organization says that the Claimant was unaware of his error until he received the charge letter, dated March 25, 2011. They say that after being informed of the issue the Claimant contacted Payroll immediately and told them that he had mistakenly input information and asked that they correct the discrepancy before his paycheck was issued. The Claimant says that he was told by the Payroll Representative that they could not do that and it would have to be handled through a local manager. The Claimant then made several attempts, via phone, answering machine and text messages to contact various company officers but received no response. They further say that Carrier Road Foreman testified that the Claimant did try to contact him a number of times but that he did not respond to the Claimant.

They also say that the Claimant had notified Carrier officials that he would be absent that particular day due to illness. They say that the method of inputting time is new and that the Claimant had only recently been trained in this new input method. They say that many times employees input time incorrectly and their time claims are rejected by payroll. The Organization, therefore, says that it should have been up to others to decline this claim in the first instance.

The Organization points out that while the Claimant did enter a "C" to show attending class on Monday, March 14 (that he admittedly did not attend) but that he also entered "X" beside Friday, March 18 indicating a rest day for which he actually attended class. They say that this is a very strong indication that the Claimant input his claim for the wrong date by mistake. They argue that it makes no sense to say that the Claimant intended to be

dishonest by claiming an extra day on the 14th while in the same report shortchanging himself one day pay for the 18th.

Result:

This Board does not agree with the position of the Organization that incorrect data entries are the responsibility of Payroll, or indeed anyone else, to catch so that employees are not improperly paid and are not, as a result, charged with being dishonest. This Board is of the view that it is up to the employee to correctly and honestly input their time claim data.

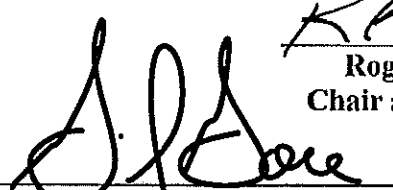

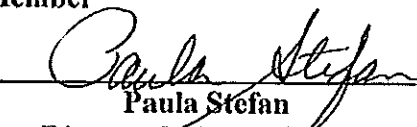
As a result, the violation of Operating Rule GR – 15 is proven.

However, proof of the violation of Operating Rule GR – 2 requires more. There, the Carrier must show that the Claimant was dishonest in his data entry. While this is not a criminal law standard, there does need to be some evidence of an intent to deceive. This Board finds persuasive the Organization's argument that the Claimant could not have intended to be dishonest by claiming the 14th while at the same time failing to claim pay for a day that was his due. As a result, this Board finds that the Carrier has failed to meet this burden of proof with respect to this latter Operating Rule in this particular case.

Therefore, this Board directs that the discipline assessed to this Claimant in this matter be reduced to a 15 day suspension without pay. In all other respects, this claim is sustained.

AWARD

The claim is partially sustained.

 _____ Gil Gore Vice-President Organization Member	 _____ Roger K. MacDougall Chair and Neutral Member	 _____ Paula Stefan Director Labor Relations Carrier Member
--	---	--

Dated: 12/21/2012

At: Chicago, IL