

**BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO. 65**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
TRAINMEN (Western Lines)
vs.
CSX TRANSPORTATION, INC.**

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**PARTIES TO THE
DISPUTE**

STATEMENT OF CLAIM: "...That CSX Transportation, Inc. reinstate [sic] Engineer Forshee and make him whole for all time lost as a result of the arbitrary dismissal [sic], from the date of improper dismissal [sic] until Engineer Forshee's seniority rights are reinstated ..."

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 November 19, 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. As specified in the PLB Agreement establishing this Board, this Award shall be limited to one page and shall not establish precedent nor be referred to by the Parties in the future.

After a thorough review of the record, the Board concludes that Engineer Forshee was assessed a 5 day actual suspension by the Carrier for excessive absenteeism, in contravention of it's Minimum Availability Policy. Under the terms of the Policy, employees in Mr. Forshee's employment situation need to be available for a minimum of 20 "weekend" days (00:01 Friday to 23:59 Sunday) in a 56 day period. Compensated days (worked, available, vacation, personal leave days, FMLA days, etc.) are considered "available" for the purposes of the Policy. For the period February 22, 2010, through April 18, 2010, Mr. Forshee was initially charged with being available only 17 days. During the course of the investigation, the Carrier was challenged by the Union on this and as a result, amended their records to 18 days of availability, but still short of the required 20.

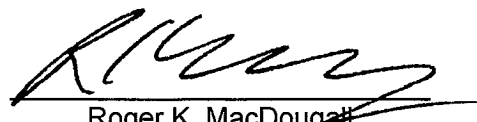
With respect to the Union's arguments that Mr. Forshee was available on 3/7 and 3/19 for in excess of 12 hours, and therefore should be afforded the same interpretation as during his extraboard service on 4/11, there is some appeal to this argument. However, on balance, Mr. Forshee was working a freight pool assignment. He knew that he would not be called for any other assignment. Any yet he chose to book off in advance of these turns going out (and even, admittedly, on a false pretense of being sick, at least on one of the occasions). Therefore, the Board finds that Mr. Forshee did violate his obligations under the Carrier's Minimum Availability Policy.

The Union further raises the plea, on behalf of Mr. Forshee, that as a result of his divorce, he only gets to see his children every other weekend. Mr. Forshee states that when he tries to use vacation or personal leave days to see his children, he is often denied due to caps placed on the number of employees who can be off at any one time. While this Board may have some sympathy for Mr. Forshee's situation, it has no jurisdiction to change the Collective Bargaining Agreement between the parties – which is effectively what Mr. Forshee pleads for. As a result, this Board has no alternative but to apply the agreement, and by inference, the policies promulgated by the Carrier under it's management rights prerogative, as written.

There is no question that Mr. Forshee has obtained familiarity with this Policy as he has been formally counseled on it twice and disciplined once under the terms of it and the Carrier's IDPAP. Having found that Mr. Forshee did violate the terms of the MAP once again, under the terms of IDPAP, the appropriate level of discipline is 5 days actual. I see no reason to disturb this assessment in all of the circumstances. In fact, I implore Mr. Forshee to pay attention to the next step in the process, under which, with a substantiated finding of fault, he could face discipline up to dismissal.

AWARD

The Claim is denied.


Roger K. MacDougall
Chair and Neutral Member
At: Chicago, IL

Dated: *July 5, 2011*