

**BEFORE
PUBLIC LAW BOARD NO. 7526
CASE NO.4
AWARD NO. 4**

**Union File: 201595
Carrier File: 2011-102705
NMB Subject Code: 119**

**UNITED TRANSPORTATION UNION (Yardmasters))
vs.)
CSX TRANSPORTATION, INC.)**

**PARTIES TO THE
DISPUTE**

STATEMENT OF CLAIM:

"Please accept this claim for Regular Yardmaster R.S. Jonio, ID 210334, at Birmingham, AL. for all time lost on account of the discipline assessed from the investigation held on May 4, 2011. Furthermore, I make claim for all days of lost earnings, all vacation entitlement and all railroad retirement credits restored. Also, an additional eight (8) hours pay for Yardmaster Jonio for May 4, 2011...the Organization again request[s] that Yardmaster Jonio's personal record be cleared of this incident..."

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Organization involved in this dispute are respectively Carrier and Organization within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Public Law Board Agreement dated January 25, 2012, 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 and the eloquent and well-presented arguments by both parties at a hearing in Jacksonville, FL on April 4, 2012, the Board concludes that Yardmaster Jonio, was hired on September 25, 2005, and attained yardmaster seniority on December 27, 2006. On December 17, 2010, the Claimant was scheduled to work the mainline yardmaster job on third shift, which starts at 2300 hours. However, the Claimant failed to report for duty and, according to the Carrier, gave a false statement to a Carrier officer when questioned as to his whereabouts.

An investigation was held, after agreed-upon postponements, on May 4, 2011. As a result of that investigation, the Carrier determined that the Claimant was guilty of violating CSX Transportation Operating Rules GR-1 and GR-2 and he was dismissed from the service on June 2, 2011. The Organization appealed the dismissal and the Carrier denied the appeal. The case was conferenced on the property and is now properly before this tribunal.

Organization's Position:

1. Procedural Issues

The Organization argues that the Carrier failed to meet its due process obligations and failed to conduct a fair and impartial investigation. However, the Organization provides no specific evidence of where these faults may have occurred.

2. Burden of Proof

The Claimant and the Organization admit that the Claimant failed to show up for work, as required, on December 17, 2010 and that he gave the trainmaster a false statement about his reason for not showing up.

3. Discipline

The Organization says that not showing up for work and making a false statement to a Carrier officer does not justify dismissal. They suggest that if every employee who makes a false statement to a Carrier officer were dismissed there would be a lot of employees and Carrier officers dismissed.

They quote an extensive array of awards wherein the Public Law Boards found that the discipline meted out by the Carrier was harsh and excessive. They say that in this case, the discipline was similarly harsh and excessive.

They say that some consideration should be given to the fact that the Claimant and a Union officer had spoken with a Carrier officer some time earlier about the Claimant going back to the Trainmen craft, but that he stayed as a Yardmaster for some time to help the Carrier out.

Further, they say that the Claimant was off sick from December 20, 2010 to the end of March 2011. They say that the Claimant's medical condition should have been taken into account when assessing discipline.

Carrier's Position:

1. Procedural Issues

The Carrier says that the investigation was conducted in a fair and impartial manner, as evidenced in the transcript of the proceedings.

2. Burden of Proof

The Carrier's Operating Rule GR-1, states, in pertinent part:

"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, or

2. Arrange for a substitute to perform their duties.

Employees subject to call for duty must be at their usual calling place or furnish information as to where they are located. When they wish to be absent or if they are unable to perform service, employees must notify the proper authority. They must not wait until a call for duty is received to request permission to be marked off...

The Carrier says that the Claimant admits not showing up for work. (Tr. p.25, l. 11).

The Carrier's Operating Rule GR-2 states, in pertinent part:

"All employees must behave in a civil and courteous manner and when dealing with customers, fellow employees and the public. Employees must not:

7. Make false statements

8. Conceal facts concerning the matter under investigation"

The Carrier says that the Claimant violated GR-2 when he made false statement to Mr. Finch to conceal the fact that he had not followed protocol and instead, failed to mark off sick and failed to secure the permission of his supervisor before his shift began (Tr. p. 17, ll. 18-22). Ms. Averitte testified as follows (Tr. p. 17):

"It is my testimony based on the information received from Mr. Finch when Mr. Jonio had stated that he called the caller and marked off that he made false statements and pretty much put me on wild goose chase to run downing clerks and get information stating that, that was not true."

The terminal lay-off report also failed to show that the Claimant had called in to mark off sick.

The Carrier says that, in light of the evidence and testimony presented, it is undoubted that the Claimant violated Rules GR-1 and GR-2.

3. Discipline

The Carrier points out that their Absenteeism Policy for Yardmasters contains minimum availability standards and establishes an Attendance Discipline Progression Process. Under the Policy, the Claimant first receives two notifications by management that an attendance issue exists. Then, the employee is subject to investigation if any subsequent attendance infraction is committed. After an investigation is conducted, the evidence and testimony presented is assessed. If the employee is found guilty, he will be disciplined in accordance with the progressive policy.

The penalties in the Policy are as follows:

- First investigation – 2 days overhead suspension for 6 months
- Second investigation – 5 days actual suspension
- Third investigation – Up to dismissal

The Carrier says that the Claimant's attendance history proves that he is a recidivist and therefore, is incorrigible.

Further, they say that according to the Carrier's Individual Development and Personal Accountability Policy (IDPAP), offenses involving dishonesty or providing false material information about matters under investigation constitute a major offense, which, if proven, may result in dismissal for a single incident.

Since December 2008, the Claimant has had seven absenteeism handlings:

- 12/17/10 -- Failure to report to work and dishonest behavior -- Step 3 -- Dismissal (Current)
- 12/16/10 -- Failure to report to work on time -- Step 3 -- Dismissal (Under appeal before this Board in a separate case)
- 10/16/10 -- Failure to report to work -- Step 3 -- 30 days Actual Suspension (Waiver Signed)
- 7/22/10 -- Failure to report to work on time Step 2 -- 3 days Actual Suspension, 2 days Overhead (Waiver Signed)
- 4/10/10 -- Failure to report to work on time Step 1 -- 2 Days Overhead (Waiver Signed)
- 4/7/10 -- Failure to report to work on time -- Coach and Counseling 2, no discipline
- 12/4/08 -- Failure to report to work on time -- Coach and Counseling 1, no discipline

In short, says the Carrier, the Claimant has been progressively disciplined but to no avail. The Claimant is unwilling to timely protect service on a full-time and consistent basis. They point out that numerous Board decisions uphold the Carrier's inherent right to expect satisfactory attendance from employees and to impose stringent standards to improve efficiency when poor attendance adversely affects railroad operations.

With respect to the Claimant's medical condition, the Carrier says that his condition cannot excuse his failure to report for duty as required, nor did he make any request or receive permission not show up for work on December 17; nor can it excuse his dishonesty. The Carrier points out that the Claimant's first visit to a medical doctor was on January 12, 2011, nearly 1 month after his absence. Similarly his first visit to the social worker was apparently on January 17, 2011.

For all of these reasons, the Carrier says that dismissal was warranted.

Result:

1. Procedural Issues

While the Organization alleges procedural issues, they provide no specific examples of such in this case. This Board has reviewed the record in full and sees no procedural issues which would prevent moving to the merits of this case.

2. Burden of Proof

As stated above, all parties agree that the Claimant failed to report for work on December 17, 2010 and that the Claimant was dishonest in with a Company officer when explaining his absence. The Carrier has, therefore, met its burden of proof.

3. Discipline


Even if this Board had not denied this Claimants discharge appeal in Case 3 of this PLB (heard concurrently with this case), it would have done so in this instance. The Claimant admittedly did not show up for work and the Organization says in its brief that they are not contesting his dishonesty in saying he had called in sick to a clerk in advance.

The issue of the medical and social worker notes are as characterized by the Carrier – perhaps not too little, but certainly too late. It seems that the Claimant sought the assistance of these professionals only after he was in serious trouble. Therefore, this Board holds that they have minimal value in mitigation of the discipline assessed.

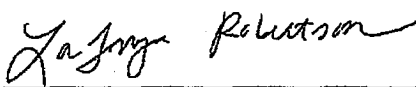
On the whole, this Board sees no reason to disturb the discipline assessed by the Carrier.

AWARD

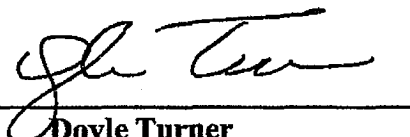
The claim is denied.



Roger K. MacDougall
Chair and Neutral Member



LaTonya Robertson
Manager Labor Relations
Carrier Member



Doyle Turner
General Chairman, UTU L&N & C&O
Yardmasters
Organization Member

Dated: 6/5/2012 At: Chicago, IL