

**BEFORE
PUBLIC LAW BOARD NO. 7584
CASE NO. 1
AWARD NO. 1**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 14711-CSX(N)))	PARTIES TO THE
vs.)	DISPUTE
CSX TRANSPORTATION, INC.)	
(Carrier file: 2011-099119))	

STATEMENT OF CLAIM:

"Claim on behalf of D. P. Cisowski, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time and benefits lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on April 26, 2011. Carrier's File No. 2011-099119. General Chairman's File No. 10-28-CD. BRS File Case No. 14711-CSX(N)."

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 July 30, 2012 that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. 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.

After a thorough review of the record, and a full hearing on this matter held on December 18, 2012 in Jacksonville, Florida, the Board concludes that in September 2010, the Claimant was a Signalman assigned to a system signal gang. The claimant was hired January 13, 1998.

In a letter dated September 23, 2010, the Claimant was charged with failure to protect his assignment and willfully neglecting his duties from September 14, 2010 through September 19, 2010. Several postponements were agreed upon by the parties. The investigation was held in Clifton Forge, Virginia on April 26, 2011. Following the investigation, the Carrier dismissed the Claimant on May 11, 2011 for abandoning his position, conduct unbecoming a CSX employee, and violations of CSXT Operating Rules – General Rule A and General Regulations GR-1 and GR-2 and General Safety Rule GS-3 and the East Region escalation policy.

The East Region escalation policy states:

"All safety-related incidents and any absenteeism issues (vehicle, personnel, or other) are to be reported immediately to the responsible Engineer of Signals Construction, as listed above. In the event that the responsible Engineer of Signal construction cannot be reached, then an immediate attempt must be made to contact myself, or one of the Engineers of Signal Construction on the East Region. In the event that no supervisor on the East Region can be contacted, please contact Ray Sipes. In the event that Ray Sipes cannot be contacted, please call any ESS signal technician ... and report the incident to a CSX ESS signal technician, and ask that they contact an East Region construction supervisor immediately. Please do not just leave a voice or text message, and assume that it was received by an ERC supervisor. Keep trying until you reach a live speaking supervisor, or signal technician...."

Rule GR – 1 states, in effect, that employees must not absent themselves from duty without permission from a supervisor. They must notify the proper authority if they wish to be absent or are unable to perform service.

Rule GR – 2 states that "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,...
5. Willfully neglect their duty...
7. Make any false statements, or
8. Conceal facts concerning matters under investigation."

Rule GS – 3 deals with job briefings.

Result:

It is uncontroverted that the Claimant failed to show up for work and for the job briefings on the days in question. What is in dispute is his justification for doing so and any authority he may have obtained for being off.

One reason the Claimant gives is that his wife was ill and, indeed, hospitalized during this time. The record discloses that there is evidence of her hospitalization and surgery. Another reason is that he was in a car accident where he hit a fire hydrant and damaged a tire on his personal vehicle. He took his vehicle to a shop for repair. A receipt from the tire repair shop is also included in the record. There is also evidence that he suffered from anxiety attacks. The Claimant says that he did call in about his absence. There is some dispute as to whether the Claimant obtained consent to be absent. On the whole, there is sufficient evidence to show that he had a reasonable expectation that he did have authority, at some point, to be off. The record, however, reflects that he did not obtain the requested permission in advance, and that he only left voicemails, in contrast to the requirement of the escalation policy. It is clear that the Claimant failed to give the notice and obtain the authority required, in advance, under the Carrier Rules in question.