

**BEFORE
PUBLIC LAW BOARD NO. 7584
CASE NO. 2
AWARD NO. 2**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 14286-SCL))	PARTIES TO THE
vs.)	DISPUTE
CSX TRANSPORTATION, INC.)	
(Carrier file: 2008-032605))	

STATEMENT OF CLAIM:

"Claim on behalf of W.K. Lewis, for all time lost and any reference to this matter removed from the Claimant's personal record, account Carrier violated the current Signalmen's Agreement, particularly Rules 47 and 48, when it failed to provide the Claimant with a fair and impartial investigation and then issued the excessive discipline of a 45-day suspension (40 days served from October 29 through December 8, 2008, and five days overhead suspension for a period of five years) without meeting its burden of proving the charges in connection with an investigation held on November 12, 2008. Carrier's File No. 2008-032605. General Chairman's File No. SCL-12-10-08D. BRS File Case No. 14286-SCL."

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 the Claimant in this case, at the time this dispute arose, had 19 years of service, and was assigned to the position of Electronic Signal Specialist headquartered at the Network Operations Center in Jacksonville, Florida.

In a letter dated October 29, 2008, the Carrier instructed the Claimant to attend a formal investigation on November 6, 2008, "...to develop the facts and place your responsibility, if any, in connection with your unauthorized absence from work Thursday, October 23, and Friday, October 24, 2008." He was charged with willful neglect of duty, failure to protect his assignment, abandonment of his position, failure to secure permission to be absent from duty, failure to follow instructions, and possible violations of, but not limited to, CSX Transportation Operating Rules, General Rule A; General Regulations GR-1 and GR-2.

After agreed-upon postponements, the investigation was held on November 12, 2008. On December 2, 2008, the Carrier notified the Claimant that he had been found guilty of the cited charges, and of CSX Safe Way Rules, and was assessed a 45 day suspension (40 actual and 5 days overhead for five years).

The Rules and Regulations in question state that:

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:

...

5. Willfully neglect their duty...

RESULT:

In the investigation record, the Claimant admits that he did not show up for work at the appointed time on October 23, 2008. He says that he had severe brake problems with his personal vehicle that day on his way to work. There is evidence that he took his vehicle to a brake shop for repairs. He says that he contacted his supervisor upon his return to his home that day to explain the situation. The evidence before this Board shows that this is true. However, the evidence also shows that he did not do so until a Carrier officer contacted him to find out why he did not show up for work. Indeed, after leaving a voice mail for him, a few hours later, the Carrier sent 2 employees to his home to see if he was alright. Only after the employees found him at home, did the Claimant call in.

With respect to the second day, the record is ambiguous. The Claimant may well have reasonably believed that he had permission to be off that day.

There is also evidence that the Claimant had requested the time off in advance, but was his request was refused. It seems, to this Board, that he decided to take the time off, without permission, in any event. One cannot do this without repercussions. However, in all of the circumstances, and given his long service record, it seems that 45 days is harsh. Therefore, this Board orders that the actual suspension be reduced to 5 days without pay. The 5 days overhead shall remain intact for the remainder of the 5 years.