

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION	)	
	)	CASE NO. 37
v.	)	AWARD NO. 37
	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM:

"Claim of Mr. H. S. Quick for all time lost attending investigation held on October 20, 2005 and all subsequent time lost account of being dismissed from service of CSX Transportation effective immediately starts (sic) September 28, 2005. Claim is also made for removal of any and all notations from his personal files concerning this incident."

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

On October 20, 2005, the Claimant, a conductor with approximately 33 years of service, attended a formal investigation concerning charges that, on September 28, 2005, the Claimant allegedly engaged in conduct unbecoming an employee and insubordination when he refused to follow instructions issued by Trainmaster H. M. Till. On November 3, 2005, the Carrier found the Claimant guilty of having violated CSX-T Operating Rules GR-2 and GR-70 and imposed the discipline of dismissal from service, effective immediately.

The Organization promptly appealed the Carrier's disciplinary action and the parties discussed the appeal in conference, the record shows. According to the record, by letter dated September 11, 2006, the Carrier reinstated the Claimant to service given the Claimant's seniority and exemplary work record. Presently, the Organization contends that the charges were not proven, and asserts that the Carrier had no factual basis for assessing any discipline in this matter. It requests that the Board strike the discipline from the Claimant's record, and make him whole monetarily and from a benefits standpoint. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully considered the on-property record appropriately before us. The Organization's procedural objections notwithstanding<sup>1</sup>, we find that the charges were not proven by substantial evidence. Trainmaster H. M. Till's testimony established that, in response to the Claimant's apparent insistence that he "was going to get his payroll ticket straightened out before he left Birmingham," Till told him, "Well, you can either take the train or mark off." According to the record, the Claimant collected his belongings, marked off from the assignment, and left the property without incident. Transcript pages 12-13. Consequently, the Board holds that the Claimant did not disobey a direct supervisory order given the choice Till had given him.

Again, instead of giving the Claimant a clear and direct order to "take the train," R605, and apprising him of disciplinary consequences in the event of his refusal, Trainmaster Till allowed the Claimant the option of either taking the train or marking off. The Claimant's decision to mark off, instead of taking the course of action that Till obviously would have preferred ostensibly gave rise to the instant dispute. The Claimant's controversial choice clearly stemmed from his dissatisfaction with Till's handling of the time ticket problem, the record shows.

According to the testimony, on the incident date, the Claimant desired that Crew Management correct a problem with a time ticket associated with an assignment he had been given prior to working Train R605. Despite the good-faith efforts of Trainmaster T. S. Taylor, the problem was still unresolved when Trainmaster Till had entered the roundhouse. The Claimant testified that he believed that commencing a new trip without first correcting the previous time ticket might have put him in violation of certain FRA instructions. However, the Board notes that the Organization's defense of the Claimant's conduct is not premised on the theory that the Claimant was not bound by the order to take the train because to do so would have placed him in jeopardy from an FRA rules compliance standpoint.

In the Claimant's view, Trainmaster Till was reluctant to help him "get his time straightened out." Consequently, the Claimant decided to mark off instead of "taking the train." See transcript pages 28-30. The Organization argues that, under the circumstances, the Claimant was improperly accused of insubordination and unbecoming conduct as a result of having chosen to mark off. Given the clear facts showing that Till indeed had given the Claimant two options as opposed to a

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<sup>1</sup> The Organization maintained that Hearing Officer D. Merrell refused to arrange for testimony by Assistant Superintendent J. G. Carnes, who was believed to have possessed pertinent information regarding the charges, and asserted that Merrell suppressed potentially exculpatory evidence (as purportedly shown in tapes and transcripts of phone calls) when he denied the representative's repeated requests to submit such evidence into the investigation record. Upon our review of the proceedings, we find that the Organization's due process objections were not unfounded.

direct order, the Claimant was not insubordinate and thus did not violate the rules with which charged.

Having studied the full factual record before us, the Board is constrained to find in the Claimant's favor. The testimonial evidence established that the Claimant was not issued a direct order to take the train. The directive given to the Claimant was indeed a choice and, therefore, lacked the essential elements necessary for establishing an insubordination case against this Claimant. Consequently, we rule that the Carrier lacked substantial evidence upon which to base a finding that the Claimant was guilty of having violated CSX-T Rules GR-2 and GR-70 on the incident date.

In addition, upon our careful review of the record we also find that the charge of engaging in conduct unbecoming a CSX-T employee was not proven by substantial evidence. When Trainmaster Till had arrived, the Claimant had boarded the engine and had commenced his initial terminal tasks. It was during that time that the Claimant expressed to Till a desire to help him correct his time ticket from a previous trip before departing for Nashville, TN. As stated above, the record shows that once the Claimant had decided to mark off he did so without any incident. The Claimant did not engage in unbecoming conduct, the record shows.

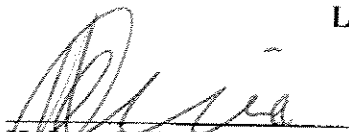
Accordingly, given the Carrier's failure to shoulder its requisite evidentiary burden of proof as regards both charges, the instant claim must be sustained as presented. The discipline will be expunged from the Claimant's record and he is entitled to lost wages and to be otherwise made whole as a result of the Carrier's unwarranted disciplinary action in this matter, we rule.

AWARD:

Claim sustained. The Carrier is ordered to comply with this Award within 30 days of its date.

Lynette A. Ross

Lynette A. Ross, Neutral Member



H. Joseph Garcia,  
Carrier Member



Roy G. Boling,  
Employee Member

Dated: 2-5-07