

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44063
Docket No. MW-45280
20-3-NRAB-00003-190090**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

**PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. H. Carter, by letter dated November 28, 2017, for alleged violation of CSX Transportation Operating Rules 100.1 and 104.2(b) was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File F35852717/17-35589 WSS).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘... the Carrier must clear all mention of the matter from Claimant’s personal record, immediately return Claimant to service with rights and benefits unimpaired, and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost because of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline.’”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the time of his dismissal, Claimant held the position of Track Inspector and had been in the Carrier's service since May 17, 1995. On September 27, 2017, Claimant was given notice of an investigation in connection with the following charge:

"The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1430 hours, on September 26, 2017, in the vicinity of WSSB. You were insubordinate when you failed to comply with the instructions of the Operations Manager to submit updated medical documents to the CSX Medical Department for review within a given time frame and all circumstances related thereto."

After a formal investigation on November 9, 2017, Claimant was found in violation of CSX Transportation Operating Rules 100.1 and 104.2(b) and was dismissed from the Carrier's service.

The Organization filed a claim on December 4, 2017. The Carrier denied the appeal on April 19, 2018. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

In the latter part of 2016, the Claimant advised he would be off work until a predetermined date. When that date passed and the Claimant did not return to work, the Carrier's supervisors attempted to contact him without success. The Claimant did not return to work in 2017 and did not contact the Carrier. In September 2017, the Carrier sent the Claimant a letter directing him to provide medical justification for his absence, or face discipline. The Claimant did not respond. When the investigation was convened, the Claimant did not attend, and the Organization was unable to explain his absence.

The Carrier contends that the Claimant was granted a fair and impartial hearing. The Carrier contends that it has offered the Claimant several opportunities to explain his absence, but the Claimant has refused to comply for more than a year. The Carrier contends that the Claimant was properly found guilty of insubordination, a major offense for which the disciplinary penalty is generally dismissal.

The Organization contends that the Claimant was denied a fair and impartial hearing. The Organization contends that the Carrier failed to meet its burden of proof, as it did not present substantial evidence that the Claimant is guilty of insubordination.

The Carrier presented substantial evidence that it gave the Claimant several opportunities to return to work or to explain and provide medical documentation justifying his continued absence. The Claimant failed to respond in any way. As a result, despite its best efforts, the Organization was left with little challenge to the charges against the Claimant. Because the Claimant offered no explanation for his absence and failed to even respond to the Carrier's communications, the decision to dismiss the Claimant was fully supported by the record.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of June 2020.