

PUBLIC LAW BOARD NO. 7163

AWARD NO. 75

CASE NO. 75

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) calendar day actual suspension] imposed upon Mr. J. Jones by letter dated February 6, 2009 for alleged violation of CSX Operating Rules GR-2 and GR-3, FRA 213 and MWI's 105-08 and MWI 2113-02, in that the Claimant allegedly falsified Federal Railroad Administration (FRA) inspection reports in connection with allegations that he submitted nine (9) reports between July 1, 2008 and October 31, 2008 that were on days other than the dates that the inspection was recorded; on July 12, 2008 inspected track but reported payroll that he worked a state outside party project and not CSXT operating expense; on July 31, 2008 and September 30, 2008 reported mass reports; and there were sixteen (16) days that no inspections were made was arbitrary, capricious and on the basis of unproven charges (Carrier's File 2009-034210)
2. As a consequence of the violation referenced in Part 1 above, Claimant J. Jones' record be cleared of the charges and compensated for all loss of wages, benefits and monetary restitution as a result of this unjust discipline."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

After review of the record before us, it is clear that the Carrier failed to comply with a significant procedural due process requirement. The requirement is a condition precedent to the Carrier's ability to make any disciplinary determination. By failing to comply with the requirement, the Carrier effectively waived its rights to impose any discipline. Rule 25, Section 1(d) reads, in pertinent part, as follows:

- (d) An employee who is accused of an offense shall be given

reasonable prompt advance notice, in writing, of the exact offense of which he is accused with copy to the union representative. *The hearing shall be scheduled to begin within thirty (30) days from the date management had knowledge of the employee's involvement and such hearing shall not begin less than ten (10) days from the date of notice. * * **

(Italics supplied for emphasis)

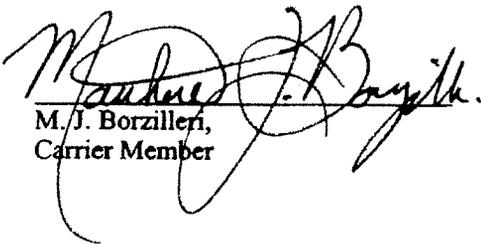
Because of the Carrier's failure to provide the requisite procedural due process, the discipline must be set aside in its entirety. Accordingly, the claim must be sustained as presented.

AWARD:

The Claim is sustained. The Carrier is directed to comply with this Award within thirty days of the date shown below.


Gerald E. Wallin, Esq., Chairman


Kevin Evanski,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: 11/18/2010