

AWARD NO. 338  
Case No. 338

Organization File No. Appeal/Smale080817  
Carrier File No. 2-17-225457

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissal) of Mr. B. Smale, by letter dated July 3, 2017, in connection with allegations that he violated Rules 100.1, 104.1, 104.2(a) and (c), 104.3(d) and (e) and 105.1(2)(5) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File Smale080717/2017-22547 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Smale shall now be '... returned to service, compensated for all lost time, and restored with all rights and benefits.' (Employees' Exhibit 'A-2')."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was first hired by the Carrier on March 7, 2006. He was subsequently promoted to a Roadmaster position, a management position outside the scope of the Agreement. During his time in management, Claimant maintained his seniority rights under the Agreement. Because of transgressions committed by him, the Carrier terminated him as a Roadmaster, whereupon he

attempted to exercise his seniority in the Maintenance of Way craft. By letter dated March 22, 2017, Claimant was directed to attend a formal investigation at which he was charged with falsifying track inspections and FRA documents, and failing to protect the Carrier's tracks against known defects. Following the investigation, Claimant was dismissed from service.


Our review of the record of the investigation shows that Claimant had falsified documents showing that FRA defects on his territory had been repaired. The evidence established that a number of defects that Claimant had closed out had not been repaired. Claimant's defense was that he had been informed by a Track Inspector that the defects had been remediated or repaired, but the Inspectors working for Claimant denied telling him so. Claimant acknowledged that he never verified if the defects had been fixed, but insisted that the other employees were lying.

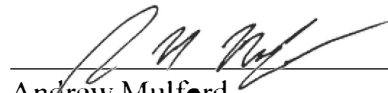
It is our conclusion that the Carrier had substantial evidence to support its charges against Claimant. It is not our role to make determinations about the credibility of witnesses in a company disciplinary proceeding. That is the role of the hearing officer, and we would overturn her decision only upon a finding that it was unreasonable. We can make no such finding in this case. Because of the seriousness of Claimant's offense, we do not find that the discipline imposed was either arbitrary or excessive.


In reaching this conclusion, we have rejected the Organization's argument that Claimant was denied a fair and impartial investigation because the Carrier did not cite specific rule violations in its notice of investigation. As has been addressed in numerous decisions, on this property and others, the function of the investigation notice is to inform the employee of the subject matter of the investigation and the nature of the charges against him. Absent an express requirement in the

Agreement, the Carrier is not obligated to cite specific rules that will be addressed at the investigation. We find that the notice in this case sufficiently satisfied the Agreement and the requirements of due process.

AWARD: Claim denied.

  
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Barry E. Simon  
Chairman and Neutral Member

  
\_\_\_\_\_  
Andrew Mulford  
Employee Member

  
\_\_\_\_\_  
Katrina Donovan  
Carrier Member

Dated: 02/04/19  
Arlington Heights, Illinois