

**PUBLIC LAW BOARD NO. 7163
CASE No. 346**

**LCAT No.: 2017-227231
BMW File No.: Jeter DA. 117**

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| Brotherhood of Maintenance of Way Employees Division |) | |
| Of the International Brotherhood of Teamsters |) | |
| |) | |
| Vs. |) | Parties to Dispute |
| |) | |
| CSX Transportation, Inc. |) | |

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s discipline (dismissal) of Mr. R. Jeter, by letter dated August 30, 2017, in connection with allegations that he violated Operating Rules 100.1, 104.2(a), 104.10 and the CSX Code of Ethics was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File JETERDA.117/2017-227231 CSX).**

- 2. As a consequence of the violation referred to in Part 1 above, Claimant R. Jeter shall now be ‘*** reinstated immediately, be exonerated of all charges and be compensated all lost wages, including overtime, credits and benefits denied to him, commencing July 20, 2017 and continuing until he is placed back in service or until this matter is resolved.’ (Employees’ Exhibit ‘A-2’).”**

FINDINGS:

The 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. The Board has jurisdiction over the dispute involved herein. The Parties to said dispute were given due notice of hearing thereon.

The Carrier hired the Claimant on August 16, 1979. During the period in question, the Claimant was assigned and working as a trackman. On July 10, 2017, the Claimant had voiced that he was going to upgrade himself in a meeting room with other workers whenever he could. On July 14, 2017, the Roadmaster who is responsible for overseeing payroll for the team requested that the acting foreman

watch for anybody claiming for upgrades while inputting payroll that should not be upgraded. When an employee conducts work that is allowed by another, or that is from another position, the employee may claim the rate of pay associated with said duties. The acting foreman subsequently advised the Roadmaster that he had identified improper upgrades being afforded to the Claimant, and then provided him with documentation. The Claimant had claimed machine operator upgrades for the entire week for this pay period. The trackman rate is \$25.84 an hour and the machine operator is \$29.19 an hour. The Claimant returned to the office approximately 25 minutes later, after already leaving for work, and changed his payroll to show no upgrades. Exhibit B shows the snippet at 15:39 on July 14th that the Claimant had upgraded to the machine operator for all five (5) days and Exhibit D shows that at 16:01 hours on July 14th that the upgrades were removed after the Claimant changed them. The Claimant was not paid for the upgrade. The Claimant explained that he has made mistakes in the past on payroll, but they were corrected prior to approval without issue. The Claimant notified not his Manager but his Manager's Manager because when he returned to the company to correct his payroll, other coworkers informed him that his Manager was asking questions.

The Carrier issued a Notice of Investigation letter dated July 24, 2017, which stated as follows: "... to determine facts and place your responsibility, if any, in connection with information received at approximately 1539 hours, in the vicinity of Cleveland, Ohio, when you falsified payroll and upgraded your position to machine operator the week of July 14, 2017, without approval of management and circumstances relating thereto ..."

The investigation hearing was held on August 10, 2017. Following the investigation hearing, Claimant received a Discipline Notice dated August 30, 2017, finding a violation of CSX Transportation Rules 100.1, 104.2 (a), and 104.10; as well as CSX Code of Ethics. The Claimant was dismissed. The Organization appealed. The Organization advanced the claim to the Highest Designated Officer by letter dated September 21, 2017, and the formal conference was held on October 17, 2017. The Carrier denied the appeal on November 15, 2017. After on-property handling between the parties, the case was mutually listed on PLB 7163 for review.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:

- 1) Did Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?
- 2) If so, did the Carrier establish by substantial evidence that the Claimant was culpable of the charged misconduct or dereliction of duty?
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?

POSITION OF CARRIER:

- 1) The Carrier contends that the Claimant was afforded a fair and impartial hearing. The Charge letter provided sufficient information to alert the Claimant of the alleged misconduct that is the subject of the investigation. The Carrier is not required to specify operating rules in the charge letter. The controlling agreement does not contain a discovery provision, and absent such a provision, the Carrier is not required to provide pre-discovery. The Carrier maintains that the Claimant's due process rights were protected and adhered to during the handling of this claim.
- 2) The Carrier further contends that the Claimant's admission, along with other testimony and exhibits adduced at the investigation hearing, establish the Claimant's Operating Rule violation by substantial evidence. The Claimant's explanation of the events is not credible for various reasons that add up to the fact that the Claimant caught wind that management was investigating his actions and he returned to avoid discipline. The Carrier argues that the actions of the Claimant were intentional, and not a mistake. The Carrier contends that there is substantial evidence that the company has met its burden of proof that the Claimant violated the cited rules.
- 3) Moreover, the Carrier contends that the assessment of discipline is justified. The Claimant was found culpable for a major offense of insubordination. Under the Carrier's Individual Development and Personal Accountability Policy, as a major offense, the Claimant can receive a disciplinary penalty up to a dismissal, even for a first event. The Carrier maintains that the discipline was commensurate with the offense.

- 4) Lastly, the Carrier contends that Rule 25 permits the Carrier to remove the Claimant from service prior to investigation for major offenses. The alleged misconduct includes CSX Transportation Rules 100.1, 104.2 (a), and 104.10; as well as CSX Code of Ethics; this claim involves a major offense. The Carrier maintains that the Claimant was properly held from service.
- 5) It is the position of the Carrier that this claim should be denied in its entirety.

POSITION OF ORGANIZATION:

- 1) The Organization contends that the Carrier failed to afford the Claimant a fair and impartial hearing, thus depriving the Claimant of his rights under Rule 25 Section 1 (c) of the Agreement. The Carrier failed to provide the Organization with a copy of the signed written statement by the Claimant as required by the rule. The Organization asserts that the claim should be sustained due to the contractual violation, and submits several awards for consideration by this Board. The Organization maintains that based on the Carrier's failure to comply with Rule 25's procedural provisions, the Board must move in favor of the Claimant without review of the merits.
- 2) The Organization further contends that the Carrier failed to meet its burden of proof. The record establishes that the Claimant desired to work upgrades that were available but incorrectly listed his payroll information. The record supports the position that the Claimant simply made a mistake, and he did not intentionally falsify his position to secure a higher wage. The Claimant corrected his mistake prior to being paid and without knowledge that he was being charged. The Organization maintains that mistakes, confusion, or accidents do not establish dishonesty because they lack the required dishonest intent.
- 3) Moreover, the Organization argues that the discipline assessed was arbitrary and unwarranted. The Claimant was a long serving employee who accidentally misidentified the position he was working. The Organization maintains that such conduct does not warrant dismissal
- 4) It is the position of the Organization that the claim be sustained as submitted.

The Carrier has charged the Claimant with a violation of CSXT Operating Rules of CSX Transportation Rules 100.1, 104.2 (a), and 104.10; as well as CSX Code of Ethics which read:

Operating Rule 100.1 states:

Employees must know and comply with the rules, instructions, and procedures that govern their duties. They must also comply with the instructions of supervisors.

When there is uncertainty, employees must:

1. Take the safe course, and
2. Contact a supervisor for clarification.

Operating Rule 104.2 states in pertinent part:

Employee behavior must be respectful and courteous. Employees must not be any of the following:

(a) Dishonesty....

Operating Rule 104.10 states: Pay must only be claimed:

1. For actual time or work performed
2. By the employee to be paid or the employee authorized to make claims for the crew or group of workers, and
3. In accordance with agreed upon procedures.

CSX Code of Ethics, Fraud and Theft states in pertinent part:

Fraud and theft are crimes and can cause lasting damage to our reputation as well as our bottom line. Fraud and theft are completely contrary to our culture and Core Values. We do not tolerate this activity under any circumstances by anyone working at or on behalf of CSX.

Fraud is an intentional misrepresentation of fact that deceives or is intended to deceive another individual or entity for personal gain..., some examples include

- Misrepresentation on time sheets or expense reports....

Theft includes stealing, misuse of assets for personal or no -business reasons or using assets without permission.

After carefully reviewing the transcript, on property handling, and the advocates' submissions, the Board finds that the Claimant was afforded a fair and impartial hearing, and there was no material procedural error. The Board further finds the evidence established that the Claimant did remove the upgrades for payment prior to the payroll approval of the same, and did not receive payment for the upgrades. The Claimant did notify a supervisor of the change made to his payroll but not his immediate supervisor who the Claimant knew was questioning the upgrades

taken. The Board finds insufficient evidence to establish a violation of Operating Rule 104.10.

Nonetheless, the Board finds that the Carrier presented substantial evidence through testimony and exhibits to establish that the Claimant acted with intent to deceive the Carrier for personal gain on his time sheet, contrary to Operating Rule 104.2 and CSX Code of Ethics, Fraud and Theft. The Board finds that the Carrier established credible evidence that the Claimant expressed his intent to take upgrade whenever he believed his assigned duties exceeded his job classification. Not only did the Claimant communicate in advance his intention to upgrade his position, he also proceeded to do so. The Organization proffers the argument that the Claimant had not actually received payment, and apparently did not know that he was being charged, when he corrected the timesheet. The Board notes this is contrary to the Claimant's rationale of why he did not notify his immediate Manager that he was changing his time sheet but instead called his Manager's Manager. The Board finds that the Claimant's actions were planned, deliberate and intentional, and this negates the argument that his actions were a misclassification or mistake.

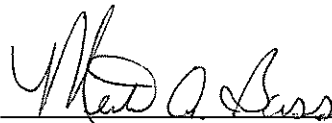
The Board should not substitute its judgment for that of management unless the Board finds that the penalty is excessive, unreasonable or that management has abused its discretion. The Board finds that the Claimant, after reflection, withdrew from his plan, and corrected the time sheet. There was no other evidence that the Claimant had misrepresented on time sheets prior to this incident to establish a pattern. From all accounts, the prior statement of the Claimant in making these adjustments was based on his erroneous position on certain duties which allow for the upgrade. The Board is persuaded by the Organization's argument that correction is appropriate in consideration of the Claimant's almost forty (40) years of service and the Claimant's record in this circumstance. The Board modifies the penalty to a time served suspension.

AWARD


Claim sustained in accordance with these findings.

ORDER


This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass, Neutral Member



Carrier Member
Dated: 5/21/19



Organization Member
Dated 5/21/19