

**PUBLIC LAW BOARD NO. 7163
CASE No. 348**

**LCAT No.: 17-44528
BMW File No.: D21332817**

Brotherhood of Maintenance of Way Employes 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. H. Boykin, by letter dated December 15, 2017, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 103.1, 103.7 and 104.3 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D21332817/17-44528 CSX).**

- 2. As a consequence of the violation referred to in Part 1 above, Claimant H. Boykin’s charges shall be dropped and he shall be made whole for all lost wages, benefits and healthcare.”**

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 April 17, 2006. On October 30, 2017, the Claimant advised his supervisor that something was wrong with his vehicle. The Claimant had put gas in the truck and after fueling the truck, the truck started having mechanical problems. The vehicle was towed to the mechanic shop, and it was

determined that unleaded gasoline was in a diesel fuel tank. The estimate cost to the Carrier is \$22,000.00.

The Carrier issued a Notice of Investigation letter dated November 2, 2017, which stated as follows: "...to determine the facts and place your responsibility, if any, in connection with information received on October 31, 2017, that an incident occurred at approximately 0735 hours, on October 30, 2017, in the vicinity of Baldwinsville, New York, when you fueled CSX Log truck 620117 with unleaded gasoline instead of diesel as required, resulting in damage to the vehicle and loss of productivity and all circumstances related thereto..."

The investigation hearing was held on November 28, 2017. Following the investigation hearing, Claimant received a Discipline Notice dated December 15, 2017, finding a violation of CSX Transportation Rules 100.1, 103.2, 103.7 and 104.3. The Claimant was dismissed. The Organization appealed, and a formal conference was held on February 1, 2018. The Carrier denied the appeal on March 1, 2018. The Carrier denied the appeal on March 1, 2018 and the Organization responded on March 5, 2018. 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 there is no legitimate dispute in the facts. There is substantial evidence that the Claimant put unleaded gasoline in a diesel truck, and his actions cost the Carrier the estimated sum of \$22,000.00. The Carrier maintains that the company has met its burden of proof that the Claimant violated the cited rules.
- 3) Moreover, the Carrier contends that the Carrier's assessment of discipline is justified. The Claimant was found culpable for a major offense 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. The Claimant's record shows a 45-day record suspension for failure to follow instructions in 2015 and a 30-day record suspension for failure to keep proper documentation in 2017. Further, the Claimant was disqualified in 2016 and 2017 from his position as a machine operator for poor performance. The Carrier maintains that the discipline was commensurate with the offense.
- 4) It is the position of the Carrier that this claim should be denied in its entirety.

POSITION OF ORGANIZATION:

- 1) The Organization contends the following: The Carrier failed to afford the Claimant a fair and impartial hearing, thus depriving the Claimant of his rights under Rule 25 Section 1 of the Agreement. The Carrier's notice of investigation failed to specify the charges which the Carrier believed that the Claimant had violated. The Carrier further failed to honor the Organization's pre-hearing discovery request, and denied the Organization the opportunity to prepare a proper defense. The Organization also maintains that these actions by the Carrier violate the Claimant's rights guaranteed by the Agreement.
- 2) The Organization further contends that the Carrier failed to meet its burden of proof. The Organization asserts that arbitral precedents states that factual disputes must be resolved in favor of the Claimant.
- 3) Moreover, the Organization contends that the discipline imposed was arbitrary and unwarranted. The Discipline should be progressive rather than punitive in nature. The Claimant had no discipline. The Claimant was an eleven (11) year

employee who mistakenly used the wrong pump to fill his vehicle. His actions were not intentional, but accidental.

- 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 100.1, 103.1, 103.7 and 104.3.

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 103.1 states in relevant part:

Employees must keep CSX electronic devices, tools, keys, or other property:

1. In safe, clean, and working condition;
2. Available for use as required; and...

Operating Rule 103.7 states in relevant part:

Employees must not:

- c. Deface or destroy CSX property.

Operating Rule 104.3 states in relevant part:

The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities provided by CSX:

- (d) Carelessness, incompetence, or willful neglect of duties.

The Board finds no material procedural error. The controlling agreement does not provide for specific charges to be stated in the Notice of Investigation. The Notice of Investigation provides sufficient information to apprise the Claimant of the nature of the offense to prepare a defense. The controlling agreement does not provide a provision for discovery request in the grievance process. The Board is limited by the terms of the agreement, and cannot amend, modify or add to the agreement. This provision must be negotiated between the parties at the table. Absent specific contractual language, due process makes it incumbent upon the hearing officer to

regulate the hearing in such a manner to allow sufficient and reasonable time for the Claimant and his representatives to review evidence during the investigation hearing. The Board finds that the hearing officer provided adequate recess, and that the record does not reflect an abuse of his role as a trier of fact. The Board finds no material procedural error.

It is well settled that the disciplinary action in this industry need only be supported by substantial evidence. Substantial evidence exists when the evidence introduced shows facts in existence on the date in question which reasonably supports the Carrier's decision. This quantum proof is a lower standard than the preponderance of the evidence. The Board has carefully reviewed the transcript and the on-property handling of the claim, as well as the arguments of the advocates. The Board finds that the Claimant put unleaded gasoline in a diesel fuel tank. The Board further finds that the Carrier has met its burden and established by substantial evidence that the Claimant has violated CSX Transportation Rules 100.1, 103.1, 103.7 and 104.3.

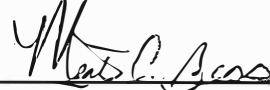
The Board finds that the penalty imposed is not arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case.

AWARD

Claim denied.

ORDER

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

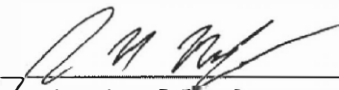


Meeta A. Bass, Neutral Member



Carrier Member

Dated: 5/21/19



Organization Member

Dated 5/21/19