

PUBLIC LAW BOARD NO. 7163

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 354
Case No. 354

-and-

CSX Transportation, Inc.

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

1. The Carrier's discipline [thirty (30) day actual suspension] of Mr. M. Strickler, by letter dated September 18, 2017, in connection with allegations that he violated Rules 100.1 and 707.7 was arbitrary, unsupported, unwarranted and in violation of the Agreement. (System File D91413617/2017-226917 CSX)
2. The Carrier's failure to stay the discipline of Mr. M. Strickler pending a hearing on appeal per Rule 25, Section 3, which was requested by the Organization in letter dated September 19, 2017, constituted a standalone violation of the Agreement.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant M. Strickler's:
 - ...suspension shall be set aside, and the Claimant shall be made whole for all financial and benefit losses as a result of the violation. Restitution for financial losses as a result of the violation shall include compensation for:
 - 1) Straight time for each regular work day lost and holiday pay for each holiday lost, to be paid in the rate of the position assigned to Mr. Strickler at the time of removal from service (this amount is not reduced by earnings from alternative employment obtained by Mr. Strickler while wrongfully suspended);
 - 2) Overtime pay for lost overtime opportunities based on overtime for any position he could have held during the time the Claimant was suspended from service, or on overtime paid to any junior employee for work the Claimant could have performed had the Claimant not been removed from service.

All notations of this suspension should be removed from all Carrier records.

FINDINGS:

This Public Law Board No. 7163 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated September 18, 2017, the Claimant, Foreman M.J. Strickler, was notified by the Carrier that he had been assessed the discipline of a thirty-day actual suspension as follows:

Dear M J Strickler:

This is in reference to the formal investigation that was held on Wednesday, August 9, 2017 in the Conference Room at 26986 State Route 281, Defiance, Ohio, and Tuesday, August 29, 2017, in the Conference Room, 301 North Randolph Street, Garrett, Indiana. The notice of formal investigation, transcript and exhibits reviewed and discussed during the course of the investigation are included in this packet.

Based on the evidence presented during the course of hearing, substantial evidence was revealed demonstrating that you violated CSX Transportation Operating Rules 100.1 and 707.7.

Upon analysis of all factors related herein, the discipline to be assessed is 30 days actual suspension beginning Friday, September 22, 2017 and ending Saturday October 21, 2017 with Sunday October 22, 2017 being the first eligible day for duty. Please contact your immediate Manager prior to marking up for duty.

s/C.D. Ramsey
Division Engineer – Chicago

By letter dated September 19, 2017, the Organization appealed the discipline to the Carrier, which letter was confirmed received by the Carrier on September 20, 2017. The letter requested the Carrier to stay the Claimant's suspension under Rule 25, Section 3, stating in part:

“In accordance with Rule 35, Section 3, we are appealing your decision. This appeal shall act as a stay in imposing the suspension until after the employee has been given a hearing. Accordingly, please accept this as our request for a hearing on appeal under the provisions of Rule 25, Section 3(a) & (b) at your earliest available opportunity.”
(Emphasis in original)

The Carrier failed to stay the suspension, and the Organization properly progressed the issue along with contentions that the Carrier failed to meet its burden of proof as to the determination of quantum responsibility for the rules violations charged and quantum of discipline.

1.

Section 3 of Rule 25, Discipline, Hearings and Appeals states:

Section 3 – Appeal

- (a) Appeal from discipline must be made, in writing, by the employee or on his behalf by his union representative to the carrier's Highest Labor Relations Officer within thirty (30) days after receipt of written notice of discipline. This appeal, when the discipline imposed is suspension, shall act as a stay (except in the case of a major offense) in imposing the suspension until after the employee has been given a hearing.
- (b) At a hearing on appeal, an employee may attend or be represented by his union representative.
- (c) After the appeal has been acted upon, the employee or his union representative shall be advised not later than thirty (30) days after the hearing, in writing, of his decision. If the decision in cases of suspension is to the effect that suspension will be imposed whether in whole or for a reduced period, the stay referred to in paragraph (a) shall be lifted and the suspension shall be imposed.
- (d) Further appeal will be subject to the procedural provisions of paragraph (c) of Rule 24.
- (e) The time limits of this Rule may be extended by written agreement between the Company and the employee or his union representative. In the event the time limits are not complied with, the discipline or right of appeal shall be dropped as the case may be.

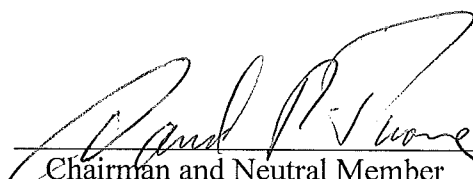
It is undisputed in the record before this Board that the discipline at issue was minor. It is clear that under the first sentence of Section 3 – Appeal (a), the appeal was made in writing to the Carrier's Highest Labor Relations Officer in a timely fashion. Under the second sentence of Section 3(a), the appeal when the discipline imposed is suspension (and not the case of a major offense), it shall act as a stay in imposing the suspension until after the employee has been given a hearing. The Carrier failed to do so and as a result is in violation

of the Agreement. Arbitration boards have no authority to ignore or delete clear and unambiguous agreement language. The parties are absolutely entitled to rely on the clear and unambiguous language of their agreement. It's up to the parties themselves to resolve agreement-related burdensome administrative issues through the process of negotiations. This Board, however, has no authority to do so. The fact that most discipline cases on the property have been handled by expedited arbitration boards outside the confines of Rule 25 and accordingly did not have the Rule 25, Section 3 (a) right to stay their suspensions does not void the plain language of Rule 25, Section 3 (a) of the parties' agreement. The Carrier's assertions of past practice and waiver are devoid of merit.

The Claimant in this case was wrongfully denied his contractual right to a stay in imposing the suspension until he was given a hearing and he suffered the economic consequence of thirty days of lost earnings because of the imposition of suspension. We must sustain this claim.

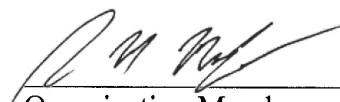
Award
Claim sustained.

ORDER: The Carrier is required to comply with this award within thirty days from the issuance of the award.


Chairman and Neutral Member
David Twomey

Carrier Member
Katrina Donovan

Dated: _____



Organization Member
Andrew Mulford
Dated: 3/14/19