

PUBLIC LAW BOARD NO. 7163

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 357
Case No. 357

-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. Soyk, by letter dated November 1, 2017, in connection with allegations that he violated CSXT Operating Rules 100.1 and 104.7 was arbitrary, unsupported, unwarranted and in violation of the Agreement. (System File **D91705717/2017-229331** CSX)
2. As a consequence of the violation referred to in Part 1 above '...the Carrier must clear all mention of the matter from Claimant's personal record, immediately return Claimant to service with rights and benefits unimpaired and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline.'

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 November 1, 2017, the Claimant, Track Foreman M.S. Soyk, was notified by the Carrier that he had been assessed the discipline of a 30 day actual suspension as follows:

Dear Mr. S. Soyk:

This is in reference to the formal investigation that was held on Thursday, October 12, 2017, in the Nashville Division Office, Large Conference Room at 624 Grassmere Park Road, Nashville, Tennessee. 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 104.7.

Upon my analysis of all factors related herein, the discipline to be assessed is 30 days actual suspension beginning Thursday, November 2, 2017 and ending Friday, December 1, 2017, with Saturday, December 2, 2017, being the first eligible day to return to duty. Please contact your immediate Manager prior to marking up for duty.

s/B.D. Crossman
Division Engineer – Louisville

The Organization appealed the discipline and the matter has been properly progressed to this Board for adjudication.

No basis exists in the record before this Board to set aside the discipline on procedural grounds.

1.

The Charging Officer, Roadmaster Raymond Jarrett, was out on the road for the entire day on duty with the Sperry test car starting 7:00 A.M. on July 14, 2017. Mr. Jarrett has no assistant at Bowling Green and as was his practice he had the senior track inspector, Mr. Brian Stinson, hold the job briefing at 7:00 on July 14, 2017, giving the daily work plan for employees.

Rather than talk to the Claimant, Foreman Soyk, Mr. Jarrett testified he talked to Chris Jones, his back hoe operator, who “was acting pretty much Foreman at that time because Mr. Soyk was not yet qualified on the territory, so [Chris Jones] was the one that I called”. (Tr. 11) The Claimant was new to the territory and started work there on June 12, 2017.

2.

At the end of the investigation held on October 12, 2017 the Claimant made the following closing statement:

Yes. I don't, this is McKendrick Soyk with the Investigation on July 14th. The Charge Letter reads that at approximately 15:30 hours, in the vicinity of Bowling Green, Kentucky I left my assignment without permission after being instructed to perform additional tasks, failed to follow end of day calling instructions/and all circumstances relating thereto. I feel like I didn't break any rules. I presented evidence that Mr. Jarrett did not call me even though Mr. Jarrett made a statement he did at 15:15. I presented evidence that he called me at 15:55. I've been respectful to everybody here and I just do not feel like I've broke any rules. This has caused emotional distress on me and my family and I would like for this to be over but like I said, I do not feel like I have broke any rules and have presented enough evidence to prove that I didn't break any rules. Thank you.

As stated previously the Carrier found Mr. Soyk responsible for violation of its rules and suspended him for thirty (30) days.

3.

Mr. Jarrett testified that the following rules were violated:

Jarrett: It would be Rule 104.7:

Employee must have the permission of a supervisor to:

- a. Leave work before designated off-duty time

And on the [age behind that 100.1:

Employees must know and comply with 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 s supervisor for clarification. (Tr. 8)

The regular work day for the crew is from 7:00 AM to 15:30 railroad time. Mr. Jarrett testified that he called Mr. Soyk "starting after 15:00 maybe 15:15 and [Mr. Soyk] said he was headed home...". (Tr. 7) Mr. Jarrett testified that Mr. Soyk did not notify him that he had to leave work early. (Tr. 11) And, Mr. Jarrett referred to the above cited rules as the rules Mr. Soyk violated.

The evidence is conclusive by phone records presented at the investigation that Mr. Jarrett's telephone call to Mr. Soyk was made at 15:55 railroad time, not 15:15! And, the designated off-duty time for the crew was 15:30. The Claimant gave proper notice that he had to leave work on time to the Roadmaster's representative Mr. Stinson, the senior track inspector who conducted the morning job briefing on behalf of the Roadmaster. And, Mr. Jones verified

that, at the morning job briefing, when the Claimant said he had to leave on time today to get his truck to the shop by 4:00 PM local time, Mr. Stinson said he didn't see a problem with that.

The fact that Mr. Jarrett was in error about his declaration that Mr. Soyk had left work early was further supported by the testimony of Justin Kennedy. Mr. Kennedy also told Mr. Stinson at the morning job briefing that he had to leave at quitting time. And both Mr. Kennedy and Mr. Soyk testified that they left work at the regular quitting time 15:30 with the end of the day report on the tablet filled out by Mr. Soyk syncing at 15:28. [Mr. Jarrett made no charges against Mr. Kennedy].

While Mr. Stinson did not inform Mr. Jarrett that both men needed to leave work at the regular quitting time, such a failure to do so is not a disciplinary issue for Mr. Soyk and is solely a matter between Mr. Jarrett and Mr. Jarrett's representative at the morning job briefing Mr. Stinson.

4.

"The charge of leaving without permission after being instructed to perform additional jobs" is devoid of merit. Mr. Jarrett's initial call to Chris Jones was verified by telephone records at 15:32 railroad time; after Mr. Soyk had properly left work at the appropriate quitting time. The instructions to perform additional tasks given to Mr. Jones not Foreman Soyk came after the two employees were properly on their way home.

5.

Mr. Jarrett also charged Mr. Soyk with failing to follow the end of day calling instructions. Based on the Charge Letter the Conducting Officer asked Mr. Jarrett "you said, you told the employee at an earlier date to call at the end of the day. Is that correct?" And he answered in the affirmative. (Tr. 9)

In questioning by the Organization Mr. Jarrett testified:

Shelton: Okay. On July 7th, you state that you told Mr. Soyk that he needs to check with you every day before he leaves?
 Jarrett: Yes, I did.
 Shelton: And you also stated for the record, from July the 7th to July 14th, he never called, not one time.
 Jarrett: Not after work to report his...
 Shelton: Then my question is...
 Jarrett: ...that he was leaving, no. (Tr. 53)

Mr. Soyk testified in answer to questions from the Conducting Officer:

Creedon: Okay. Did you ever have a conversation, face to face, with Mr. Jarrett about the instructions for calling before you left for the day?
 Soyk: The only face to face conversation we have had was on, I think it was the next day after the text message where he texted me after work hours at, well July 7th, he come up to me. We cleared up some things, got some stuff we needed on the truck. And that was about it. There wasn't any instructions face to face about that. We were talking about other things than this.
 Creedon: Did you typically, Mr. Soyk, inform Mr. Jarrett what you did for the day or what you got done? Did you call for any issues other than when you needed to leave work?
 Soyk: No. He would give us our stuff or, to do in the mornings during job briefing and we would usually go do it and I would sync it on the tablet at the end of the day and that would usually be it. A lot of times he wasn't there.
 (Tr. 39, 40)

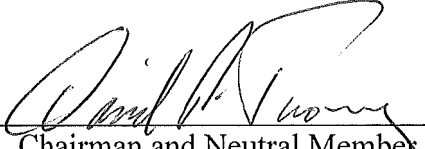
On July 14, 2017 Mr. Soyk did what he expressed above he “synced” what he and his crew did for the day on the tablet at the end of the work day and properly left the property. The Carrier has not come close to meeting its burden of proof that Mr. Soyk had the additional duty to call the Roadmaster to check in with him every day before he leaves, and that he violated such a duty. A mere assertion without corroboration or an admission has no probative weight whatsoever.

The Claimant, Foreman Mr. Soyk was correct in his closing statement, that he had violated no rules and had presented more than enough evidence to prove that he didn't break any rules, and that the process caused emotional distress on himself and his family.

We are compelled to sustain this claim.

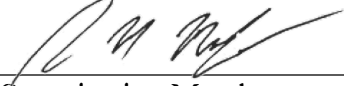
Award
Claim sustained

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


Chairman and Neutral Member
David Twomey

Carrier Member
Katrina Donovan

Dated: _____


Organization Member
Andrew Mulford
Dated: 3/14/19