

PUBLIC LAW BOARD NO. 7163

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 359
Case No. 359

-and-

CSX Transportation, Inc.

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

1. The Carrier's discipline (dismissal) of Mr. J. Sanders, by letter dated November 28, 2017, in connection with allegations that he violated the CSX Transportation Operating Rules 104.2.a and 104.10.1 was arbitrary, unsupported, unwarranted and in violation of the Agreement. (System File D91706517/17-08789 CSX)
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Sanders' record shall be cleared of the charges leveled against him and the Carrier shall '...immediately return Claimant to service with rights and benefits unimpaired, and beginning on December 1, 2017, 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.'

FINIDNGS:

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 28, 2017, the Claimant Mr. J.M. Sanders was notified by the Carrier that he was assessed the discipline of dismissal in all capacities from CSX Transportation, as follows:

Dear J.M. Sanders:

This is in reference to the formal investigation that was held on Wednesday, November 8, 2017, in the Conference Room of the Nashville Division Office at 624 Grassmere Park Drive, 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 104.2.a and 104.10.1.

Upon my analysis of all factors related herein, the discipline to be assessed is your immediate dismissal in all capacities from CSXT Transportation.

Please arrange to return any company materials in your possession to any Supervisor at the nearest CSX location.

s/J.L. Davis
Division Engineer – Nashville.

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

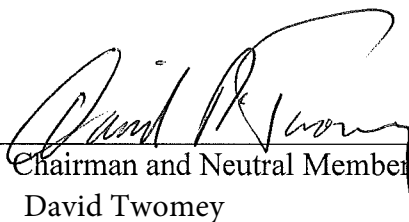
The Organization contends that the Carrier violated Rule 25 when it refused to postpone the investigation until the Claimant's doctor cleared him for travel for the investigation. The original investigation was postponed several times at the Claimant's request. The Carrier then requested that the Claimant have his physician complete a Certification of Ongoing Injury or Illness form to the Carrier to substantiate the need for the postponements. When the Claimant failed to respond to the request, the investigation was held *in absentia*. We find that Rule 25 was not violated, and the Carrier had the right to proceed with the investigation under existing circumstances.

We find that substantial evidence of record supports the Carrier's determination that Mr. Sanders violated the Code of Ethics when he claimed that he worked 10 hours straight time and 8 hours overtime on May 31, 2017. The testimony of Roadmaster Roberts established that the

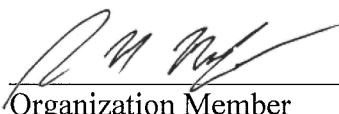
Claimant left 2 hours prior to the end of his 10 hour regular shift and was not seen again until 3.5 hours after the end of his shift, and he left less than 0.5 hours later. (See Tr. 10) Supporting documents, including a written statement from Chris Dowdy in which he reports that the Claimant sent him the Claimant's time to be entered into the payroll system, along with a text message sent to the Claimant showing the Claimant the time that had been entered; and text messages from the Claimant to Roadmaster Love and Chris Dowdy regarding his time for May 31, 2017.

Claiming pay for hours not worked is in violation of Operating Rule 104.2 dishonesty and Operating Rule 104.10 pay must be claimed for actual time or work performed. We cannot find that dismissal from service is either arbitrary, capricious or excessive in this case. We must deny this claim.

Award
Claim denied.


Chairman and Neutral Member
David Twomey

Carrier Member
Katrina Donovan
Dated: _____


Organization Member
Andrew Mulford
Dated: 3/14/19