

PUBLIC LAW BOARD NO. 7163

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 362
Case No. 362

-and-

CSX Transportation, Inc.

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

1. The Carrier's discipline (dismissal) of Mr. B. Parker, by letter dated July 7, 2017, in connection with allegations that he violated CSX Transportation Operating Rule 712.24 was arbitrary, unsupported, unwarranted and in violation of the Agreement. (System File D701 846 17/2017-224848 CSX)
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Parker shall '...be exonerated of these charges, restored to service, and when request (sic) remedy will be made.'

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 July 7, 2017, the Claimant, Vehicle Operator B.E. Parker was notified by the Carrier that he was assessed the discipline of dismissal in all capacities from CSXT Transportation, as follows:

Dear B.E. Parker:

This is in reference to the formal investigation that was held on Thursday, June 22, 2017, at the Jacksonville Division Office, at 3019 Warrington Street, Jacksonville, Florida. The charge letter, 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 Rule 712.24.

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/K.L. Spivey
Division Engineer – Jacksonville

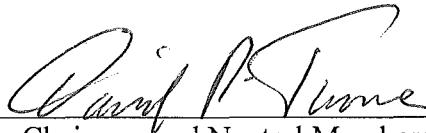
The Organization appealed the discipline and the matter has been properly progressed to this Board for adjudication.

No basis exists to set aside the discipline in this case on procedural grounds.


Substantial evidence of Record supports the Carrier's determination that the Claimant M. B.E. Parker was in violation of Operating Rule 712.24, which prohibits employees from entering the Red Zone—a minimum of 15 feet beyond the maximum reach of the extendible parts of the equipment—until the operator notifies employees that it is safe to do so. Three field managers performing efficiency testing of employees observed three employees standing in foul of the Red Zone of a backhoe at a job site, where they were assigned to remove road crossing asphalt and install cross ties. The managers explained the violations to the three employees. Two employees were offered and signed waivers as far as their efficiency test failure, agreeing to the violation. And, for the very same violation, Mr. Parker was charged, properly found culpable for a Red Zone violation and dismissed from service under the Carrier's Individual Development and Personal Accountability Policy (IDPAP). There is no question but all three employees were in violation of Rule 712.24. We find however, with full deference for the IDPAP and weighing the Claimant's long years of service and the nature of the rule violation in this case, that Mr. Parker shall be returned to service with all rights unimpaired without back pay on a "last chance" basis.

Award:
Sustained in Part, as
per Findings

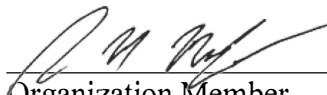
ORDER: The Carrier is required to comply with this award within thirty days from the
issuance of the award.



Chairman and Neutral Member
David Twomey



Carrier Member
Katrina Donovan
Dated: March 19, 2019



Organization Member
Andrew Mulford