

PUBLIC LAW BOARD NO. 7163

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division – IBT Rail Conference

Award No. 363
Case No. 363

-and-

CSX Transportation, Inc.

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

1. The Carrier's discipline (dismissal) of Mr. R. Hirtner, by letter dated August 28, 2017, in connection with allegations that he violated CSX Transportation Operating Rule 100.1, 103.1(2), 03.2 and 104.2(b) as well as the driving policy division memo was arbitrary, unsupported, unwarranted and in violation of the Agreement. (System File D70185117/2017-226985 CSX)
 2. As a consequence of the violation referred to in Part 1 above, Claimant R. Hirtner's suspension shall be set aside and he shall:
 - '...be made whole for all financial and benefit losses as a result of the violation. Any benefits lost including vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:
- 1) Straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the claimant while wrongfully suspended);
 - 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service.
 - 3) Overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was suspended from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been suspended from service;

- 4) Health, dental and vision care insurance premium, deductibles and co-pays than he not have had (sic) not been unjustly suspended.

All notation of the dismissal 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 August 28, 2017, the Claimant, Track Inspector R.W. Hirtner was notified by the Carrier that he was assessed the discipline of dismissal in all capacities from CSX Transportation, as follows:

Dear R. W. Hirtner:

This is in reference to the formal investigation that was held on Tuesday, August 8, 2017, in the upstairs Conference Room at 3019 Warrington Street, Jacksonville, Florida. 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, 103.1(2), and 104.2(b); as well as the driving policy division memo.

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 this discipline and the matter was progressed to the Board for adjudication.

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

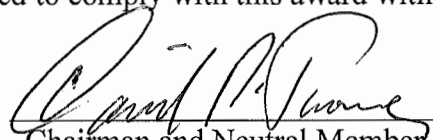
Substantial evidence of record including the full testimony of Roadmaster Bradley Sanders and his observation of Mr. Hirtner on July 11, 2017 driving a company vehicle at 9:15 A.M. on Lake Hatchineha Road near Mr. Hirtner's home, knowing that CSX had no industries in that area, and the discredited excuses offered by Mr. Hirtner, supports the Carrier's determination that Mr. Hirtner was in violation of Operating Rules 100.1, 103.1(2), 103.2 and 104.2(b) for failing to comply with the company vehicle driving policy.


The Staff Engineer at Jacksonville issued a High Importance directive on June 16, 2017 dealing with Personal Trucks vs. CSX Trucks, pointing out that it has been said many times that no one will drive CSX trucks home, that apparently people still are driving CSX trucks home including on weekends and it is costing CSX for fuel, putting the Company in violation of CDL laws and making CSX vulnerable should there be an accident while "off duty". Mr. Sanders gave a copy of this memo to Mr. Hirtner on June 19, 2017.

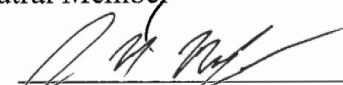
Mr. Hirtner is a competent track inspector, with a clear attendance record, and with some past disciplinary flaws corrected by appropriate discipline. The long period of time he has been out of service for his violation of the company vehicle driving policy has now served its corrective purpose. He shall be returned to service with all rights unimpaired but without back pay.

Award
Claim sustained as per finding

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