

AWARD NO. 365  
Case No. 365

Organization File No. F40852517  
Carrier File No. 2017-229039

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1. The Carrier's discipline (time served suspension) imposed upon Mr. J. Hedrick, by letter dated November 1, 2017, in connection with allegations that he was in violation of Rules 100.1 and 104.7(a) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File F40852517/2017-229039 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Hedrick shall now have all mention of this matter removed from his record, immediately returned to service with rights and benefits unimpaired and compensated for all loss suffered, including but not limited to straight time, overtime, double-time, as well as healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline."

**FINDINGS:**

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On September 1, 2017 Claimant was assigned as a Trackman on the 5GC2 team, but was temporarily working with the 5GB8 team on the Allegheny Subdivision. On that day, Claimant had

reported for work late. As the 5GC2 team had already left the yard, Claimant was instructed to go to Clinton Forge to work with the 5GB8 team. According to Claimant, he could not find the 5GB8 team at Clinton Forge, so he went home. In doing so, Claimant did not contact a supervisor to request permission to leave work.

As a result of this incident, Claimant was issued a letter on September 14, 2017 directing him to attend a formal investigation on September 28, 2017, at which he was charged with failing to follow instructions to meet up with his section after showing up late for work. He was also charged with leaving work and failing to notify his supervisor. The record reflects that Claimant was withheld from service on September 12, 2017, pending the results of the investigation. After a postponement, the investigation was conducted on October 12, 2017. By letter dated November 1, 2017, the Carrier notified Claimant that he was found in violation of the Carrier's Operating Rules 100.1 and 104.7(a), and was assessed discipline of time served, beginning September 14, 2017 and ending November 1, 2017. According to the Organization, Claimant received the discipline notice on November 9, 2017 and returned to work the following day.

The Organization has raised several objections in this case, which shall be addressed by the Board in no particular order. The Organization contends the Carrier did not comply with the Agreement's time limit regarding the issuance of discipline. It cites Rule 25, Section 1(f), requiring that "Notice of discipline must be given within twenty (20) days following the close of the hearing." Many arbitral panels in this industry have recognized that a carrier has satisfied its obligation under such a provision when it places the notice in the mail. The Carrier cannot be responsible for any

delays that are beyond its control. We find, therefore, that the mailing of the notice on the 20<sup>th</sup> day following the investigation was in compliance with Article 25, Section 1(f).

The Organization also takes issue with the Carrier's finding that Claimant was in violation of Operating Rules 100.1 and 104.7, inasmuch as neither Rule was cited in the Notice of Investigation or mentioned in the investigation itself. First, we find that the Carrier is not required to cite rules that might have been violated in its charge, unless the Agreement specifically imposes such a requirement. The applicable Agreement in this case does not. It is sufficient that enough facts are cited in the charge to enable the employee to understand the scope of the investigation and prepare a defense. We find that the Notice of Investigation in this case satisfies that requirement. We agree, however, that the Carrier cannot make a finding that Claimant was in violation of Rule 100.1 because that Rule was never referred to during the investigation. As the Rule is not in the record before the Board, we also cannot make a finding that Claimant violated it.

As for the reference to Rule 104.7, the Carrier submits that this was a typographical error and the discipline notice should have referred to Rule 104.6. That Rule was read three times during the investigation, the third time being during the questioning of Claimant. Rule 104.6 states:

Employees must report to work at designated time and place.  
Employees unable to work or who want time off must make the request:

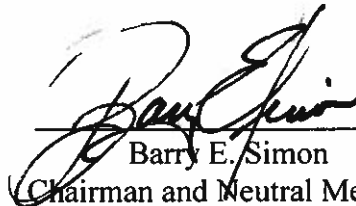
1. To the proper authority, and
2. Sufficiently in advance to allow the vacancy to be filled.


When asked if he reported for work at the correct designated time and place, and if he notified anyone that he was leaving, Claimant responded that he did not. He further acknowledged that he violated the Rule by being fifteen minutes late for duty. Claimant should have understood that he

was being disciplined for violating Rule 104.6. We find, therefore, that the reference to Rule 104.7 was a typographical error and should not affect the validity of the discipline.

Finally, the Organization has objected to the fact that Claimant was withheld from service, asserting this was not an offense that warranted such action. The Carrier has argued that this was a Major offense, which could result in Claimant's dismissal. It has, however, explained that it imposed only a time-served suspension, "thereby reducing this violation to a Serious Offense for IDPAP progression purposes." If this is a Serious offense, discipline would not exceed a thirty-day suspension. For this reason, it is the Board's determination that Claimant's discipline should be reduced to a thirty-day suspension, and he should be made whole for all time and benefits lost in excess thereof. Time lost should take into consideration that Claimant did not return to work until November 10, 2017, the day after he received notification that he could do so.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within forty-five days.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Katrina Donovan  
Carrier Member

Dated: 07/15/19  
Arlington Heights, Illinois