

AWARD NO. 373
Case No. 373

Organization File No. D91402218
Carrier File No. 18-35645

PUBLIC LAW BOARD NO. 7163

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

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

1. The Carrier's discipline (dismissal) of Mr. R. Gudausky, by letter dated January 11, 2018, in connection with allegations that he violated CSX Transportation Rules 104.2, 2007.3 (3) and 2007.6 was arbitrary, unsupported and on the basis of unproven charges (System File D91402218/18-35645 CSX).

2. As a consequence of the violation referred to in Part 1 above, '... the dismissal shall be set aside and the Claimant 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 for each regular work day lost and holiday pay for each holiday lost, to be paid in the rate of the position assigned to Mr. Gudausky at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Gudausky while wrongfully dismissed);
- 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Mr. Gudausky was out of service;
- 3) Overtime pay for lost overtime opportunities based on overtime for any position he could have held during the time Mr. Gudausky was dismissed from service, or on overtime paid to any junior employee for work Mr. Gudausky could have performed had he not been removed from service;

4) Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed.

All notations of this dismissal should be removed from all carrier records.' (Employee's Exhibit 'A-4')."

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.

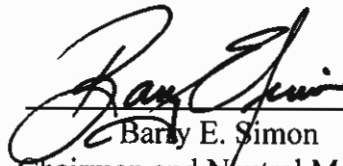
Following a formal investigation at which he was charged with making a backing movement in a CSX vehicle and making contact with an outside party's vehicle, resulting in damage to CSXT equipment, as well as being dishonest and concealing facts about the incident when questioned by a supervisor, Claimant was dismissed from service.

This investigation came about because someone called the 1-800 number on the Company vehicle to report that the vehicle backed into her unoccupied vehicle near Mather and Sayer Avenues in Chicago Ridge, Illinois. According to the caller, the driver got out of the vehicle, looked at the damage, and then left the scene. At the investigation, photographs showing damage to a Toyota hybrid vehicle and scratches to the bumper of Claimant's vehicle were introduced. Additionally, a video showing this incident was made a part of the record. In his defense, Claimant acknowledged backing up toward the Toyota, and getting out of his vehicle to see if he had hit the car. According to Claimant, he saw no damage. Assistant Division Engineer T. H. Jensen testified that he had asked Claimant about the incident, and was told that he did not think he hit the car.


Upon our review of the record of the investigation, we conclude that the Carrier had substantial evidence to support its charge against Claimant. The fact that he got out of his vehicle to inspect the car strongly suggests Claimant was aware that he had hit it. In fact, the record reflects that he came back later to look at the car. He obviously felt and/or heard the two vehicles striking. His denial to ADE Jensen, therefore, was an untruthful statement.

At the time of this incident, Claimant had only four years of service. He had already had discipline for a Major offense in 2015, and a Serious offense in 2016. His dismissal for this Major offense was consistent with the principles of progressive discipline as set forth in the Carrier's Individual Development and Personal Accountability Policy (IDPAP). We find no basis for any modification of the discipline imposed.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Andrew Mulford
Employee Member



Katrina Donovan
Carrier Member

Dated: 07/15/19
Arlington Heights, Illinois