

AWARD NO. 375  
Case No. 375

Organization File No.  
Carrier File No. 2017-229157

**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: "Claim of the System Committee of the Brotherhood that:

1.     The Carrier's discipline [thirty (30) days actual suspension] of Mr. K. Lamica, by letter dated November 6, 2017, in connection with allegations that he violated CSX Transportation Operating Rules 100.1 and 104.3(d) was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier's File 2017-229157 CSX).
2.     As a consequence of the violation referred to in Part 1 above, Claimant K. Lamica shall now be fully exonerated of all charges brought against him, properly compensated for the Carrier's violations of the Agreement and given all benefits and credits due him."

**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.

When Roadmaster Julio Perez hi-railed over the trackage between mileposts QMB 1.60 and 1.70 on August 30, 2017, he noted that many ties had not been properly secured and had spikes

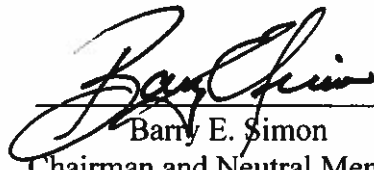
sticking out. Carrier records show that Claimant was the Foreman on Gang 5Q14 that had performed tie installation on this trackage on June 19, 2017. As a result, Claimant was directed to attend a formal investigation at which he was charged with failing to properly install ties or clean up the work area between June 1 and June 30, 2017. Following the investigation, Claimant was assessed a thirty-day actual suspension.

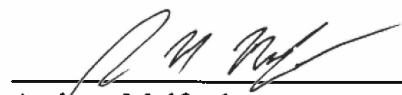
At the investigation, Claimant testified that his gang was installing ties in the area and drove in spikes part of the way down to hold the gauge so they could check the track to see if it was the proper gauge. Before they could complete the job, though, a train was going to come through and work in the area for some time. They then left the job uncompleted because they could not do any more work. Claimant testified that he reported that the work had been completed because Roadmaster Perez had told him to always enter "yes" on the computer to show that the job was complete. According to Claimant, when he returned to the office he had told Perez that the work site had not been cleaned up.

The Organization does not dispute that Claimant had left the job not completed, but argues that Roadmaster Perez had knowledge of this fact on the day in question. It has also submitted statements purporting to show that Perez had discussed pounding down the spikes as early as August 8, 2017. The Notice of Investigation in this case was not issued until September 18, 2017. Therefore, the Organization argues that the Carrier had violated Article 25(d) of the Agreement by not scheduling an investigation within twenty days following management's first knowledge of the facts involved in the charge.

In reviewing the record of the investigation, the Board finds that Roadmaster Perez was evasive and obstructive when asked about his knowledge of the incident and the timing of such knowledge. From this, we conclude that Claimant had told him the work was not complete on June 19, 2017. Additionally, the Board accepts that Perez was aware of the spikes not being fully installed at least by August 8, 2017. Thus, we find that the Carrier failed to hold a timely investigation. As a consequence of this violation of the Agreement, we must sustain the claim regardless of the merits of the discipline.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Katrina Donovan  
Carrier Member

Dated: 07/15/19  
Arlington Heights, Illinois