

**PUBLIC LAW BOARD NO. 7163  
CASE NO. 380**

**CSXT File: 2017-80066  
BMWE File No. F33852817**

<b>PARTIES</b>	)	<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>
	)	<b>EMPLOYES DIVISION - IBT RAIL CONFERENCE</b>
	)	
<b>TO</b>	)	<b>VS.</b>
	)	
<b>DISPUTE</b>	)	<b>CSX TRANSPORTATION, INC.</b>

**STATEMENT OF CLAIM:**

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

- 1. The Carrier's discipline (dismissal) of Mr. B. Bowman, by letter dated December 12, 2017, in connection with allegations that he violated CSX Transportation Operating Rules 104.10 and 104.2 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File F33852817/17-80066 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant B. Bowman's dismissal shall be set aside and '... the Carrier must clear all mention of the matter from Claimant's personal record, immediately return Claimant to service with rights and benefits unimpaired, and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.' (Employees' Exhibit 'A-2')."**

**FINDINGS:**

The Board, upon the whole record and all the evidence, finds that: The Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Roadmaster approved the Claimant to take vacation on Friday October 20, 2017 and knew the Claimant had a CDL physical on October 19, 2017. The Claimant left his hotel headquarter on the morning of October 19 and drove his personal vehicle to the doctor's office conducting the CDL physical. While at his CDL physical, the Claimant was contacted by another supervisor to go fill out a statement at another headquarter location near the Doctor's office once he was finished with his physical. The Claimant left the doctor's office and drove to the DMV to take an eye exam and update his medical card on record, then ran a personal errand during his lunch period. After his lunch period was over, the Claimant drove to the headquarters in Marion and completed a written statement and left it on the door of the supervisor there at 1600 hours. The Claimant then drove back to the hotel headquarters in Monroe, NC. The Claimant did not come into work on October 20, 2017 as he was taking a vacation day. The Roadmaster made a payroll correction on October 19, 2017 that utilized the Claimant's remaining eight (8) hours of vacation to another day. The Claimant was not notified of the payroll correction made by the Roadmaster resulting in no banked vacation remaining in the system once the Claimant entered time into the payroll system on October 23, 2017.

The Carrier issued a Notice of Investigation letter dated October 25, 2017, which stated as follows "...to determine the facts and place your responsibility, if any, in connection with information received on October 24, 2017, that an incident occurred at approximately 0730 hours, on October 23, 2017, in the vicinity of Hamlet Roadmaster Office, at Hamlet, North Carolina, when you improperly took a vacation day, claimed pay for time not worked, and all circumstances related thereto..."

After some postponement, the investigation hearing was held on November 22, 2017. Following the investigation hearing, the Claimant received a Discipline Notice dated December 12, 2017, finding a violation of CSX Transportation Operating Rules 104.10 and 104.2. The Claimant was dismissed. The Organization appealed the Carrier's decision by letter dated December 12, 2017, and the Carrier denied the same on March 4, 2018. The Organization responded on March 8, 2018. A formal conference was held with no change in the position of the Carrier on February 9, 2018. This matter is before this Board for a final resolution of the claim.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:

- 1) Did Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?
- 2) If so, did the Carrier establish by substantial evidence that Claimant was culpable of the charged misconduct or dereliction of duty?
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?

The Carrier contends that the Claimant was afforded a fair and impartial hearing. The Carrier asserts that the procedural objections raised by the Organization are without merit. The controlling agreement does not require specific rule charges, pre-hearing discovery or specification of the major offense prior to being withheld from service. The Carrier asserts that Claimant admitted to the rule violation which serves to negate any perceived procedural deficiency. The Carrier contends that the company has satisfied its burden of the proof. The Carrier argues that the Claimant admitted in the investigatory hearing he took off on October 20, 2017 and claimed pay he was not entitled to in violation of the aforementioned rules. Claimant's own admission alone satisfies the Carrier's burden of proof. The Carrier also asserts that the clear language of the rule only denotes claiming pay, not receiving payment which is supported by arbitral precedents. Moreover, the Carrier contends that the discipline was justified and assessed in accordance with the Carrier's policy since the Claimant's actions were egregious because he claimed pay for work that he did not do. Moreover, the Claimant was dishonest and for his

request for payment he did not earn, dismissal is appropriate based on the Carrier's IDPAP, as well as past Arbitration precedent. It is the Carrier's position that the claim should be dismissed.

The Organization contends that the Claimant was denied a fair and impartial hearing and the Carrier failed to comply with Rule 25 of the Agreement. The Organization argues that the Carrier failed to provide proper notification that the Claimant was being withheld from service pending a hearing as required by Rule 25. The Organization also argues that the Carrier did not provide the exact offense that the Claimant was accused of. The Organization further contends that the Carrier failed meet its burden of proof. The Organization argues that the Claimant did not intentionally claim pay for time not worked on October 19 and 20, 2017. Mistakes, confusion or accidents do not establish dishonesty as they lack the required dishonest intent. Further, the Organization contends that the discipline was arbitrary, unwarranted and excessive. It is the position of the Organization that the claim should be sustained and the Claimant be reinstated to the service.

The Carrier charged the Claimant with violation of CSX Transportation Rule CSX Transportation Operating Rules 104.10 and 104.2 which read:

Rule 104.2 Employee behavior must be respectful and courteous. Employees must not be any of the following:

- a. Dishonest, or
- b. Insubordinate, or
- c. Disloyal, or
- d. Quarrelsome.

Rule 104.10.1 reads:

Pay must only be claimed:

1. For actual time of work performed.

After carefully reviewing the transcripts, exhibits and submissions, the Board finds no procedural errors that would materially affect the due process rights of the Claimant. The Carrier has failed to introduce sufficient evidence to support its conclusion that the Claimant was dishonest and/or guilty of theft of time. It is the opinion of this Board that the Carrier should have requested an explanation of the

Page 5

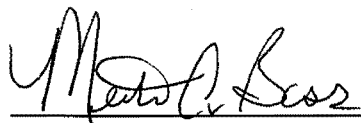
error in the first instance as opposed to administratively correcting the prior error in payroll without notice to the Claimant. The Board does find that the Claimant claimed pay for actual time of work not performed. The Board is troubled that a long term employee would make such an error in judgement and finds that substantial penalty is warranted. The penalty is modified to a time-served suspension with Claimant being reinstated and there being no impairment to his rights and benefits.

**AWARD**

Claim sustained in accordance with these findings.

**ORDER**

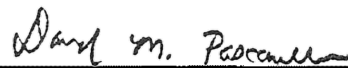
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass  
Neutral



Katrina Donovan  
Carrier Member



David Pascarella  
Organization Member

Dated at Chicago, Illinois, this 26<sup>th</sup> day of NOV. 2019.