

**PUBLIC LAW BOARD NO. 7163  
CASE NO. 381**

**CSXT FILE No. 2017-228895**

<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. D. Roberson, by letter dated October 27, 2017, in connection with allegations that he violated CSX Transportation Operating Rules 103.3 and 104.4 was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 2017-228895 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant D. Roberson’s dismissal shall be set aside, his record cleared, reinstated to service, provided all rights and benefits unimpaired and compensated for all loss.”**

**FINDINGS:**

**The Board, upon the whole record and all the evidence, finds that: The Carrier and the Employee 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.**

The Carrier hired the Claimant on October 15, 2011. The Claimant was working as a track inspector during the period in question. On September 13, 2017, the Roadmaster received a call from a CSX Special Agent who notified him that there was CSX property at the Claimant's rental property. The Special Agent stated that the matter could be pursued criminally or kept in house; the Roadmaster elected to proceed in-house. The Roadmaster then contacted the Claimant and instructed him to immediately return the CSX property, which he did.

The Claimant stated that he had obtained the permission to temporarily use the ties from the Roadmaster. The Claimant also stated that he had not obtained permission to use the sign posts that were used for a temporary backstop at a rental property. The Roadmaster denied giving permission to use the sign posts but did not recall his statements regarding the railroad ties. The log-truck driver who was under the supervision of the Roadmaster admitted to only delivering the ties and the sign posts to Amsterdam Hill; he was evasive of who instructed him to deliver the CSX property. The Claimant stated that he never requested the sign posts, and suggested the sign posts were mixed in the tie pile prior to the delivery. The Roadmaster stated that the sign posts were kept separately, according to CSX policy, and should have not been mixed with the railroad ties.

The Carrier issued a Notice of Investigation letter dated September 26, 2017 which stated as follows "...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 09:00 hours on September 13, 2017, in the vicinity of Amsterdam, New York. It was reported to Management that you took 15 sign posts and 22 railroad ties from CSX property to your residential property. Additionally, you were asked to return the property to Milepost QC 174.4 (Quist Road Crossing), which you did as instructed, and all circumstances related thereto ..."

Following a postponement, the investigation hearing was held on October 9, 2017. Following the investigation hearing, the Claimant received a Discipline Notice dated October 27, 2017, finding a violation of CSXT Operating Rules 103.3. and 104.4. The Claimant was dismissed. The Organization appealed the Carrier's decision by letter dated November 9, 2017, and the Carrier denied the same on March 4, 2018. The Organization advanced the appeal by letter dated March 15, 2018, and the Carrier denied the same. A formal conference was held with no

change in the position of the Carrier. 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 Claimant was given proper notice of the charges; he and his union representative were present at the hearing; the Claimant was given the opportunity to produce and examine evidence. The procedural objections raised by the Organization are not based on any provisions of the controlling agreement, and, therefore, are without merit. The Carrier maintains that the Claimant's fundamental due process rights were protected. The Carrier contends that the evidence establishes that the Claimant violated the cited rules. The Claimant admitted that he did not have permission to take the group of signs. The Carrier opines that since the Claimant did not have permission to take the signs and had possession of the ties and signs on his property, the Claimant committed a theft, which is criminal conduct. Moreover, the Carrier contends that the discipline assessed was justified and issued in accordance with IDPAP policy. The Carrier asserts that a single major offense rightfully results in a dismissal, even if an employee has no discipline record. The Claimant stole from the Carrier. 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. The Organization argues that the Carrier failed to provide adequate advance notice of specific rule violations and charges against the Claimant and further violated the Agreement when it unjustly removed the Claimant from service pending the outcome of a hearing. This was in violation of Rule 25. The Organization also contends that the Carrier failed to meet its burden of proof to establish a violation of the cited rules. The Organization asserts that the Claimant's

actions did not equate to any criminal conduct; the borrowed property was removed with proper authorization and was returned as agreed. The Organization questions the credibility of the Roadmaster when he borrowed from, and still owes money to, the Claimant. Moreover, the Organization contends the penalty of dismissal was excessive for these circumstances. The Claimant had approximately sixteen years of service with no discipline. 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 CSXT Operating Rule 103.3 and 104.4.

Rule 103.3 reads:

The unauthorized possession, removal, or disposal of any material from CSX property or from the property of customers is prohibited. Any article of value found on CSX property must be protected and turned in to a supervisor.

Rule 104.4 reads:

The following behaviors are prohibited at all times: criminal conduct that may damage CSX's reputation or that endangers CSX's reputation or that endangers CSX property, employees, customers, or the public.

The Board has carefully reviewed the record, and finds no material procedural error in this case. The Board finds that the notice of investigation provided sufficient information to apprise the Claimant of the potential charges against him in order to prepare a defense.

The record establishes that both the railroad ties and the signposts were delivered to the Claimant. The Roadmaster's failure to repudiate the Claimant's assertion that he gave permission for the use of the railroad ties is problematic for the Carrier to meet its burden of proof, given the totality of the circumstances. Both the Claimant and the Roadmaster testified that the sign posts were not discussed, and neither testified to any actual knowledge of how the sign posts were included in the delivery. The Board finds that the Claimant was granted permission to use the railroad ties and the sign posts were delivered with the ties, giving the implication that he had permission to use this property as well. However, upon the delivery of the same, the Claimant, who knew he had to have permission to use CSX property, did not return the signposts or confirm that he had permission for their use. The

Board finds that there is substantial evidence to find the Claimant guilty of Rule 103.3 as to the sign posts only.

The Board finds that the Carrier failed to meet its burden proof as to Rule 104.4. The record clearly establishes that the railroad ties and the sign posts were in the possession of the Claimant. The record fails to establish any criminal conduct where the Roadmaster cannot definitively state that he did not give permission for the railroad ties. The driver is evasive on who instructed him to transport the property when the ties and sign posts are separately stored. The Claimant denies requesting the signposts.

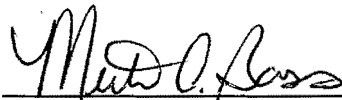
The remaining issue is whether or not the penalty imposed is arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case. Based on the aforementioned discussion, the Board finds that the penalty of dismissal is unreasonably harsh and modifies the penalty to a time-serve suspension with no impairment to his rights and benefits.

**AWARD**

Claim sustained in accordance with these findings.

**ORDER**

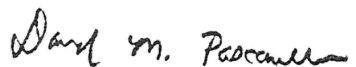
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass  
Neutral



Katrina Donovan  
Carrier Member



David Pascarella  
Organization Member

Dated at Chicago, Illinois, this 26th day of NOV. 2019.