

**PUBLIC LAW BOARD NO. 7163  
CASE NO. 382**

**CSXT File No: 2018-54278**

<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. A. Hudson, by letter dated December 6, 2017, in connection with allegations that he violated CSX Transportation Operating Rule 712.17 was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 18-54278 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, the Carrier shall remove the charges from Claimant A. Hudson’s record in their entirety. Claimant A. Hudson shall also be made whole for the substantial monetary loss in which he has suffered due to the suspension and removal from service by the Carrier without just cause and be allowed all other rights and benefits unimpaired.”**

**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 Carrier hired the Claimant on August 1, 2011. On October 19, 2017, there were two vehicles on the track under the same authority; one operated by McDonald and another trailing vehicle operated by Claimant. At some point before arriving at their final destination, the lead truck began to slow without announcing to the trailing vehicle. The lead truck was moving about 4 mph and the trailing truck was moving at 10-15 mph at the time of impact. The Claimant's truck was speeding on the track prior to the collision when he traveled 34 mph while limited to 30 mph. The Claimant stated that he was not aware the lead truck was slowing or stopping at the location where the collision occurred. Damage to the lead truck was approximately \$9200, while damage to the trailing truck was approximately \$2300. All four employees sustained injuries as a result of this incident.

The Carrier issued a Notice of Investigation letter dated November 3 2017, which stated as follows "...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1100 hours, on October 19, 2017, at or near milepost BG 106.5, when you failed to conduct a proper job briefing to discuss hazards, vehicle spacing, vehicle speed, or stopping distance before the work group started hi-railing and all circumstances thereto..."

The investigation hearing was held on November 16, 2017. Following the investigation hearing, the Claimant received a Discipline Notice dated December 6, 2017, finding a violation of CSX Transportation Operating Rule 712.17. The Claimant was dismissed. The Organization appealed the Carrier's decision by letter dated December 18, 2017, and the Carrier denied the same on March 20, 2017. A formal conference was held with no change in the position of the Carrier on February 26, 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 arguments are without merit. Rule 25 does not require that witnesses be sequestered, and lack of sequestration does not preclude a fair and impartial hearing. The Claimant was not precluded from asking questions at the hearing. The supervisor testified that he did verbally advise the Claimant that he had the right to contact his union representative. Moreover, the written advisory at the top of witness statements fulfill the Carrier's obligation. The Carrier maintains that the Claimant was afforded a fair and impartial hearing. The Carrier also contends that substantial evidence is contained with the record to support the finding of the rule's violation. The Carrier asserts that the evidence established that the Claimant was speeding which contributed to the accident causing injury. The Carrier also argues that the Claimant abruptly hit the brakes before striking the lead vehicle because he was not paying attention. The Carrier asserts that the facts of record do not support the Claimant's contention that the rail was slick. Moreover, the Carrier contends that the discipline was justified and assessed in accordance with the Carrier's policy. 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 comply with Rule 25 of the Agreement when it failed to provide a standalone investigation. The investigation addressed the charges of three (3) other employees involved and who were also witnesses at the Claimant's investigation. The Organization also argues that the Carrier failed to offer the Claimant an opportunity to contact his Union representative before he submitted a written statement. The Organization maintains that these violations are material. Further, the Organization contends that the Carrier failed to meet its burden of proof. The Claimant did conduct a proper job briefing but an individual cannot account for every possibility. Moreover, the Organization argues that the penalty is arbitrary and unwarranted. The evidence established mitigating factors. The Organization argues that although the weather was unusually warm, there was a section of the rail that was wet due to the morning dew and trees on the rail. The Claimant was in the process of slowing down and applied his brakes but the brakes locked up and the vehicle began to slide down the rail. Lastly, the Claimant had over six (6) years of seniority. 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 Operating Rule 712.17. Said rule is incorporated herein as if fully rewritten.

The Board has carefully reviewed the record, and finds no material procedural error in this case. Although the parties' agreement does not provide for a contracted right for witness sequestration and standalone hearings, the parties' agreement does have a just cause standard. Under this standard the board does consider an industrial due process analysis, and must weigh the actual process against any alleged prejudice to the Claimant. Sequestration is a truth seeking tool in hearings. The purpose of sequestration was described by the U.S. Supreme Court: "The aim of imposing the rule on witnesses, as the practice of sequestering witnesses is sometimes called, is twofold. It exercises a restraint on witnesses tailoring their testimony to that of earlier witnesses, and it aids in detecting testimony that is less than candid." Geders v. U.S., 425 U.S. 80, 86 (1976). Although the better practice is to allow for the sequestration, the record does not establish any prejudice to the Claimant. The same is true regarding separate investigation, there is a balance between cost savings and the due process rights of the Claimant. However, the Board finds no prejudice in this instance to the Claimant.

The Board finds that the Carrier has met its burden of proof and that the Claimant violated the cited rules. There exists substantial facts in the record to support the finding of a violation of the cited charge. In particular, the Claimant failed to operate at a speed that would permit stopping within one-half (1/2) the range of vision resulting in a collision. In consideration of the proven offense and the Claimant's record, the Board finds that the penalty imposed is commensurate with the offense.

**AWARD**

Claim denied.

**ORDER**

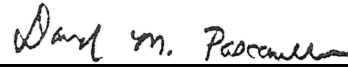
This Board, after consideration of the dispute identified above, hereby orders that an award not favorable to the Claimant be made.



**Meeta A. Bass**  
**Neutral**



**Katrina Donovan**  
**Carrier Member**



**David Pascarella**  
**Organization Member**

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