

**PUBLIC LAW BOARD NO. 7163
CASE NO. 383**

**CSXT File No: 2018-46803
BMWE File No. D40801918**

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY
) EMPLOYES DIVISION - IBT RAIL CONFERENCE
)**

TO) VS.

DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s discipline (time served suspension) of Mr. V. Leighty, by letter dated January 31, 2018, in connection with allegations that he violated CSX Transportation Operating Rule 104.2b was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D40801918/18-46803 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant V. Leighty shall now be fully exonerated, have all charges dismissed, properly compensated and given all benefits, rights and credits.”**

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 7, 2006. On November 13, 2017 the Claimant submitted his proposed vacation schedule to the Roadmaster. The Roadmaster responded that he could not approve the vacation schedule because senior employees were already approved to take that time. The Roadmaster instructed the Claimant to address the issue with the committee and resubmit his schedule for approval. The Claimant did not reschedule his vacation, and the Roadmaster approved his request for vacation.

The Carrier issued a Notice of Investigation letter dated December 20, 2017, which stated as follows "...to determine the facts and place your responsibility, if any, in connection with information received that on December 15, 2017, at approximately 1146 hours, in the vicinity of Scottsville Virginia, you failed to follow the directive of the Roadmaster requiring you to not schedule your vacation at the same time as a senior employee within the same force which resulted in a disruption to service during your absence, and all circumstances relating thereto..."

The investigation hearing was held on January 11, 2018. Following the investigation hearing, the Claimant received a Discipline Notice dated January 31, 2018, finding a violation of CSX Transportation Operating Rule 104.2. The Claimant was assessed a thirty-one (31) day time served suspension. The Organization appealed the Carrier's decision by letter dated March 21, 2018, and the Carrier denied the same on May 13, 2018. A formal conference was held with no change in the position of the Carrier on April 16, 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 Rule 25 of the Agreement does not require the Carrier to specify within the charge letter the Rules allegedly violated and there is no right to prehearing discovery. The Carrier also asserts that the Organization did not raise any additional procedural arguments on appeal and therefore cannot raise in this instance. The Carrier maintains that the Claimant was afforded a fair and impartial hearing. The Carrier contends that the testimony and exhibits establish the Claimant's violation of Rule 104.2. The Claimant did not reschedule his vacation as instructed by the Roadmaster and had no intent to change his schedule. Moreover, the Carrier contends that the discipline was justified and assessed in accordance with the Carrier's policy. The Carrier argues that the Claimant could have been dismissed for insubordination but instead was granted a thirty-one (31) day time served suspension. 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 by removing the Claimant from service. The Organization further contends that the Carrier failed to meet its burden of proof. The Organization asserts that this is a contract dispute disguised as discipline. The Organization argues that the Claimant properly submitted his vacation when requested by Carrier management. When the Carrier did not approve the dates, the Claimant informed the Carrier that he would work his vacation at the punitive rate (per the terms of the National Vacation Agreement) and the Carrier approved the vacation request. Further, the Organization contends that the discipline was arbitrary and unwarranted. There was no just cause to 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 CSX Transportation Rule 104.2 which reads: 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.

“The following excerpts are from the National Vacation Agreement Article 14:

‘Any dispute or controversy arising out of the interpretation or application of any of the provisions of this agreement shall be referred for decision to a committee, the carrier’s members of which shall be the Carrier’s Conference Committees signatory hereto, or their successors; and the employee members of which shall be the Chief Executive of the Fourteen Organizations, or their representatives, or their successors. Interpretations or applications agreed upon by the carrier members and employee members of such committee shall be final and binding upon the parties to such dispute or controversy.

This section is not intended by the parties as a waiver of any or their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy.’,,

After carefully reviewing the transcript, testimony, exhibits and submissions, the Board finds that the Claimant did not violate rule 104.2. The Board finds that the Carrier did not meet its burden of establishing that the Claimant was insubordinate. Insubordination occurs when an employee is given a clear directive, which he understands, and then willfully disregards or disobeys it knowing that he may be disciplined. The record does not establish that the Roadmaster gave the Claimant a direct order to change his vacation schedule after their email exchanges with notice of discipline. To do so would have fulfilled the Roadmaster’s responsibility of telling the Claimant what the penalty would be if he refused to comply. To the contrary, the Roadmaster approved the vacation request.

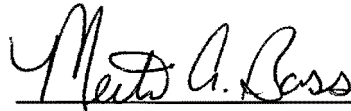
Having sustained the claim in favor of the Claimant on the merits, the procedural argument is moot.

AWARD

Claim sustained.

ORDER

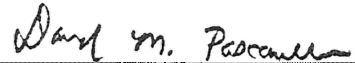
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass
Neutral



Katrina Donovan
Carrier Member



David Pascarella
Organization Member

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