

**PUBLIC LAW BOARD NO. 7163
CASE NO. 384**

**CSXT File No: 2018-30074
BMWE File No. D91700118**

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 (dismissal) of Mr. C. Dowdy, by letter dated January 3, 2081, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.2 and CSX Code of Ethics was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D91700118/18-30074 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, the Carrier shall remove the charges from Claimant C. Dowdy’s record in their entirety. Claimant C. Dowdy 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 11, 2008. During the period in question, the Claimant was working and signed as a track inspector. The facts are not disputed. On October 28, 2017, the Claimant was working as a track inspector. The Claimant input into the Carrier's computer-based record system that he had inspected a section of track at the Nashville Terminal. The Claimant did not have track authority that day and his GPS records showed that he was not near that section of track. The Claimant provided a statement where he admitted that he did not inspect the tracks that day but ran personal errands instead. The Claimant admitted that he drove the truck in accordance with the GPS documents. The Claimant provided in his statement he had derailed twice in the recent past and was afraid to get on the tracks on the day in question. The Claimant did not inform his supervisor of said anxiety. The Claimant admitted to violating the charged rules.

The Carrier issued a Notice of Investigation letter dated November 7, 2017 which stated as follows: "...to determine the facts and place your responsibility, if any, in connection with information received October 30, 2017, that an incident occurred at approximately 0730 hours, on October 28, 2017, in the vicinity of Nashville Terminal when you neglected your duties, input false reports into ITIS, and were dishonest about your location throughout the workday. Additionally, you claimed pay for work not actually performed..."

After postponement, the investigation hearing was held on December 14, 2017. Following the investigation hearing, the Claimant received a Discipline Notice dated January 3, 2018, finding a violation of CSX Transportation Rule(s) 100.1, 104.2, and CSX Code of Ethics. The Claimant was dismissed. The Organization appealed the Carrier's decision by letter dated January 18, 2018, and the Carrier denied the same on March 28, 2018. The Organization responded by letter dated April 9, 2018. A formal conference was held with no change in the position of the

Carrier on March 1, 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 mentioning of the Claimant's prior disciplinary record in the discipline letter is not a procedural argument; the letter was sent after the investigation hearing. Further, the Organization did not raise any procedural argument in the hearing and on appeal. The Carrier argues that the argument relates to the quantum of discipline; this is not a procedural issue. The Carrier contends that the admission of the Claimant and other evidence presented at the investigation established that the Claimant violated the cited rules. Moreover, the Carrier contends that the discipline assessed is justified and was consistent with the Carrier's policy. The Carrier argues that the logic behind dismissal in dishonesty cases is that the Carrier must be able to rely and trust the individuals whom they employ. 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 Carrier failed to offer the Claimant an opportunity to contact his Union representative before he submitted a written statement about the event. The Organization argues that based on the Carrier's failure to comply with Rule 25's procedural provision the claim should be sustained. The Organization contends that the Carrier has failed to meet its burden of proof. Moreover, the Organization contends that the discipline is grossly excessive, harsh, and disproportionate. The Organization argues that the remorseful testimony of the Claimant should be taken into consideration. The Claimant had over nine and half years of service with the

Carrier with no prior discipline. It is the position of the Organization that the claim should be sustained and the Claimant be reinstated to service.

The Carrier charged the Claimant with violation of CSXT Operating Rules 100.1, 104.2, and CSX Code of Ethics. The same are incorporated herein as if fully rewritten. Specifically, Rule 104.2(a) reads: "Employee behavior must be respectful and courteous. Employees must not be any of the following: ...dishonest."

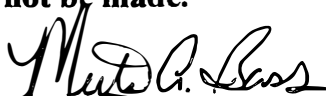
The Board has carefully reviewed the record, and finds no material procedural error in this case. The Board finds that the Carrier has met its burden of proof that Claimant violated the cited rules. The Claimant is guilty of dishonesty. It is a fundamental expectation in employer-employee relationships to be able to trust an individual to perform and fulfill his duties and responsibilities. Willful and deliberate acts of dishonesty that are premeditated outweigh mitigating factors such as long and satisfactory service with the employer. The Claimant's failure to inspect the tracks while falsifying reports places the lives of his coworkers working on a train on those tracks as well as others in the area at peril. The Board finds the penalty to be commensurate with the offense.

AWARD

Claim denied.

ORDER

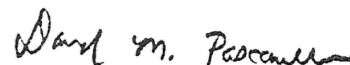
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Meeta A. Bass
Neutral



Katrina Donovan
Carrier Member



David Pascarella
Organization Member

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