

**PUBLIC LAW BOARD NO. 7163
CASE NO. 385**

CSXT File No: 2017-80066

**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 [fifteen (15) day actual suspension] of Mr. R. LaHair, by letter dated December 5, 2017, in connection with allegations that he violated CSX Transportation Operating Rule 100.1 was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 17-19464 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant R. LaHair shall be fully exonerated, have all charges dismissed, be 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 May 14, 2007. On July 22, 2017, the Claimant was called out to inspect the tracks. The Claimant answered the telephone call from the TCIS desk, expressed his opinion that there was no change in the track condition, and rejected the call-out for work.

The Carrier issued a Notice of Investigation letter dated July 27, 2017, which stated as follows "... to determine the facts and place your responsibility, if any, in connection with information received that on July 23, 2017, that an incident occurred at approximately 1630 hours, on July 22, 2017, when you were called out to go to milepost QB 77.4 for a potential washout and never went and all circumstances related thereto ..."

The investigation hearing was held on November 15, 2017. Following the investigation hearing, the Claimant received a Discipline Notice dated December 5, 2017, finding a violation of CSX Transportation Operating Rule 100.1. The Claimant was assessed a fifteen (15) day 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. The Carrier also asserts that the Organization did not raise any additional procedural

arguments on appeal, and, therefore, cannot be raised in this instance. Further, the Claimant admitted to the violation, therein negating any procedural violation. The Carrier maintains that the Claimant was afforded a fair and impartial hearing. The Carrier contends that the Claimant's admission, along with the other testimony and exhibits, establish his violation of operating rule violations by substantial evidence. Moreover, the Carrier contends that the discipline was justified and assessed in accordance with the Carrier's policy. The Carrier asserts that the Organization did not argue on appeal that the discipline is too harsh, and therefore has waived the issue. Further, arbitral precedent supports discipline for violation of Rule 100.1 with the amount of discipline in accordance with the procession within the 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 Carrier failed to comply with Rule 25 of the Agreement by not stating with specificity the alleged rule violation and failing to stay the suspension of the Claimant until after the hearing on appeal, as required by Rule 25, Section 3 (a). By letter dated December 19, 2017, the Organization requested the Carrier to stay the Claimant's suspension per Rule 25, Section 3. The Organization maintains that based on the Carrier's failure to comply with Rule 25's procedural provision, the Board must find in favor of the Claimant without review of the merits. The Organization further contends that the Carrier failed to meet its burden of proof. Rule 17 does not state that overtime is mandatory but instead states the senior employee normally and customarily performing the work in question would be given preference. The Claimant was given preference but denied the call-out inspection work. 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 compensated for the time that he was held out of service.

The Carrier charged the Claimant with violation of CSX Transportation Rule(s) 100.1 which reads:

100 - Application of Rules and Special Instructions

100.1 Employees must know and comply with rules, instructions, and procedures that govern their duties. They must also comply with the instructions of supervisors. When there is uncertainty, employees must:

1. Take the safe course, and
2. Contact a supervisor for clarification.

**RULE 17 PREFERENCE FOR OVERTIME WORK (in part) Section 1
Non~mobile gangs:**

(a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.

(b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered/called in the order of their seniority, in the required job class.

After carefully reviewing the transcript, testimony, exhibits and submissions, the Board finds that the Carrier did not meet its burden of proof. The Board finds that the Claimant did not violate rule 100.1 as alleged. The Claimant was off duty, and the nature of the call was to perform work outside his normal tour of duty. According to Rule 17, the Claimant was not obligated or mandated to perform the work. The Claimant answered the phone, and although he gave reasons to why he felt that the inspection was not necessary, the Claimant rejected the call. The Organization is correct that the call was simply providing him preference due to his seniority. The Carrier did what the company is supposed to do, call the next person on the roster.

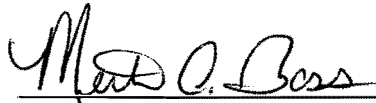
Having sustained the claim in favor of the Claimant on the merits, the procedural argument is moot.

AWARD

Claim sustained.

ORDER

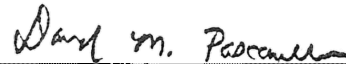
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass
Neutral



Katrina Donovan
Carrier Member



David Pascarella
Organization Member

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