

**PUBLIC LAW BOARD NO. 7163
CASE NO. 387**

LCAT File No. 18-83666

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. A. Rapp, by letter dated March 7, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.3(e), 705.3(2), 705.4, 705.5, 705.7 and 2002.1 was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 18-83666 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant A. Rapp shall be returned to service immediately, with all rights and benefits unimpaired and compensated for all loss including straight time and overtime.”**

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. Parties to said dispute were given due notice of hearing thereon.**

The Carrier hired the Claimant on June 2, 2003. On January 22, 2018, the Claimant was working and assigned as the watchman for a team who were grinding on a frog. The Claimant explained that he temporarily lost focus and failed to notify his coworkers of an oncoming Amtrak train. The coworkers were able to reach their designated place of safety but were unable to remove their equipment from the track. The equipment was damaged. The Claimant did not have an updated briefing and did not have his watchman communication, i.e., horn, whistle or radio.

The Carrier issued a Notice of Investigation letter dated January 25, 2018, which stated as follows "...to determine the facts and place your responsibility, if any, in connection with information received that on January 22, 2018, at approximately 1042 hours, in the vicinity of Rochester (RC-Subdivision). While working at CP 380 Track 2, you failed to have a job briefing at the start of the job, failed to provide watchman look out, failed to have the proper tools to provide watchman look out, and caused damage to hoses on truck 240265 when Amtrak 48 ran over them on Track 1, and all circumstances relating thereto..."

The investigation hearing was held on February 21, 2018. Following the investigation hearing, the Claimant received a Discipline Notice dated March 7, 2018, finding a violation of CSX Transportation Rule(s) 100.1, 104.3(e), 705.3 (2), 705.4, 705.5 , 705.7 and 2002.1. The Claimant was dismissed. 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 hearing office properly postponed the hearing because there were operational audits preventing the investigation from taking place on the original scheduled date. Rule 25 of the Agreement does not require the Carrier to specify within the charge letter the Rules allegedly violated. The Carrier also contends that the Claimant admitted that he violated the cited rules. The Carrier maintains 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 actions of the Claimant could have endangered life and property; it was fortunate that no one was killed. The Carrier asserts there is arbitral precedent for such a discipline on account of such a major violation of an operating rule. 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. The Organization further contends that the Carrier failed to meet its burden of proof. Further, the Organization contends that the discipline was excessive. The Organization argues that the Claimant had over sixteen (16) years of service with the Carrier with only a coaching and training event. The Claimant was honest, upfront and forthright about the events. The Organization argues that the quantum of discipline was too harsh. The Organization also asserts arbitral precedent that discipline is to be progressive rather than punitive in nature. 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 CSX Transportation Rule(s) 100.1, 104.3(e), 705.3 (2), 705.4, 705.5, 705.7 and 2002.1. Said rules are incorporated herein as if fully rewritten.

The Board has carefully reviewed the record, and finds no material procedural error in this case. The Board finds that the Claimant met its burden of proof. The Claimant admitted that he lost focus and acknowledged that he violated

the rules. The Board acknowledges the sincerity of remorse that the Claimant showed regarding the incident and the impact that his actions had on his employment with the Carrier. However, the Board is not in a position to substitute their judgment for that of the Carrier but instead must determine if the penalty is within the bounds of reasonableness given the circumstances. The Board finds that the penalty imposed is commensurate with the offense. The Carrier is responsible for maintaining a safe working environment. The Carrier must have confidence that its employees will follow all required rules and regulations to protect the safety of its employees. The Claimant was working as the watchman for his gang member; the position of watchman requires constant diligence. The Claimant was responsible for the safety of the lives of his team. According to the Claimant he lost focus. Blessedly, no one was injured and there was only property damage. The Claimant's seniority is insufficient to warrant mitigation in this safety violation case set in a potentially dangerous environment. The responsibilities as a watchman and the potential consequences of any unsafe performance support the dismissal.

AWARD

Claim denied.

ORDER

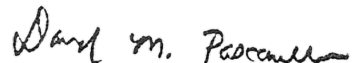
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Meeta A. Bass
Neutral



Katrina Donovan
Carrier Member



David Pascarella
Organization Member

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