

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 392

PARTIES)
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TO)
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DISPUTE)
)
BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE

VS.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Thomson, by letter dated February 27, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.2(a) and 104.3 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D21901718/18-18242 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Thomson shall have the charge letter and all discipline related to the above removed from his record and he shall be paid for all time lost.”

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 on June 21, 1934. This Board has jurisdiction over this dispute involved herein. Parties to said dispute were given due notice of hearing.

STATEMENT OF FACTS:

Claimant, J. Thomson, has been employed by the Carrier for seven (7) years as a machine operator. He is charged with leaving work prior to the end of his shift without permission and claiming pay for work not actually performed. In addition, he was also charged with the reckless operation of a CSXT vehicle at an excessive speed near Exit 38, Eulonia, Georgia. Based upon these charges, he was removed. A formal investigation was held on November 22, 2017, where he was found guilty of violating CSX Transportation Operating Rules 104.2(a) and 104.3.

It is the position of the Organization that the Carrier failed to cite the specific rule violation before the investigation commenced, which hampered its ability to adequately prepare and defend the Claimant, in violation of Rule 25, Section 1(d). Moreover, the Organization also argues that the Carrier failed to provide substantial evidence to prove that the incident occurred. Lastly, the Organization asserts that the Claimant further explained that his total calculation included pre-trip and post-trip towards the cumulative hours worked. Based on the foregoing, the Organization requests that the Board reinstate him with back pay.

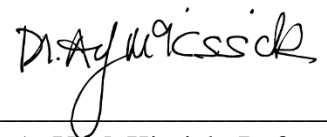
On the other hand, it is the Carrier's position that the Claimant was driving recklessly and at an excessive rate of speed, almost causing an accident. In addition, the Carrier asserts that the Claimant was afforded a fair and impartial hearing. The Carrier also further asserts that substantial evidence was presented, as required. For all of the above reasons, the Carrier requests that the Board dismiss the claim.

OPINION OF THE BOARD:

After a careful analysis of the investigation, the Board finds that the Organization was not adequately provided advanced notice of specific rules before the commencement of the hearing, as required. Correspondingly, the Organization was disadvantaged in not having the opportunity to prepare a proper defense in violation of Rule 25. Thus, the Carrier failed to meet its burden of proof.

AWARD:

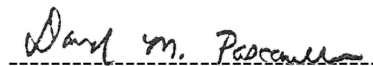
The claim is sustained. The Claimant is reinstated, but without back pay.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020