

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 7163**

**CASE NO. 395**

**PARTIES**     )  
                  )  
                  )  
**TO**            )  
                  )  
**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. M. Woods, by letter dated September 13, 2017, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 700.1, 700.3 and 706.1 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D603617/2017-227058 CSX).
2. As a consequence of the violation referred to in Part 1 above, ‘... the Carrier must clear all mention of the matter from Mr. Woods’ personal record, immediately return Mr. Woods to service with rights and benefits unimpaired, and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking mortgage/rent or other financial loss suffered as a consequence of the discipline’ (Employees’ Exhibit ‘A-2’).”

**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, M. M. Woods was charged with a violation of the Carrier’s Individual Development and Personal Accountability Policy (IDPAP) which is a Major Offense and can result in a disciplinary penalty of dismissal for reckless behavior and damage to equipment, amounting to nine thousand, two hundred (\$9,200) dollars, the cost of repair of the truck. Facts reveal that

the Claimant was driving a Carrier truck and was struck by a train by Y 103 when he entered a crossing in Russell Yard. The record reflects that the Claimant had given the conductor permission to move the train when the Claimant was struck. Upon inspection and analysis, facts further reveal that the Claimant was struck within two (2) seconds later by the engine which was traveling ten (10) miles per hour.

It is the position of the Carrier that this Claimant had a disciplinary record of two (2) prior charges. One was a charge of insubordination in 2012 which was upheld in arbitration. Second is a current charge of dishonesty, yet to be decided upon in arbitration. Although the Claimant claims to have stopped at the stop signal, looked both directions and saw the engine sitting still, this version of events is not congruent with the fact that a train cannot have moved to ten (10) miles an hour within two (2) seconds, as the Claimant claims. Thus, the Carrier asserts that the Claimant's version of events is untrue. Based upon the foregoing, the Carrier concludes that the Claimant must be found culpable of the charge violation based upon the Carrier's substantial evidence, as presented.

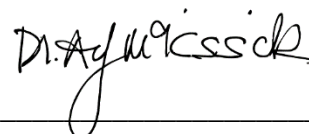
On the other hand, it is the position of the Union that the Claimant was a machine operator for seven (7) years as of the date of this submission and absent of any prior discipline. The Organization argues that at the formal investigation on July 26, 2017 that the Organization objected at the hearing that pertinent witnesses were unavailable to testify. Thus, the hearing was postponed upon this objection and recommenced on August 24, 2017. Nonetheless, the Organization further asserts that the Carrier failed to comply with Rule 25, Section 1(c) due to procedural irregularities. Here, the Union argues that the Claimant was not allowed to contact his Union representative prior to reducing his statement into writing. The Union also asserts that the Carrier violated Rule 25, Section 1(c) when it failed to provide the Organization with a copy of the Claimant's written statement. Thus, the Organization contends that this refusal to comply with Rule 25, Section 1(c) was deliberate and intentional. Based on the foregoing, the Organization requests that the Board sustains this claim.

### **OPINION OF THE BOARD:**

After a careful analysis of the investigation, the Board finds that the violation of the Individual Development and Personal Accountability Policy (IDPAP), as delineated, constitutes a Major Offense punishable for the first offense. Here, the Claimant was reckless in his behavior and damaged the Carrier's vehicle for nine thousand, two hundred (\$9,200) dollars in damages. As such, his explanation of events was later deemed to be untruthful by the factual analysis presented. Based on the foregoing, the Board finds that dismissal is the appropriate action under these circumstances.

### **AWARD:**

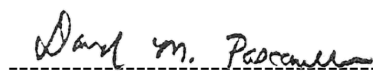
The claim is denied. Claimant M. M. Woods is hereby terminated.



Dr. A. Y McKissick, Referee



Carrier Member



Organization Member

**DATE:** February 27, 2020