

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 399

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. M. Reese, by letter dated March 19, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 103.1 (1), 712.17, 712.21(b) and 2052.1 (5) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D91404018/18-04455 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Reese shall be exonerated, returned to service immediately, with all rights and benefits unimpaired and compensated for all loss including straight time, overtime and other compensation.”

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. A. Reese is an eighteen (18)-year employee of CSX when he rear-ended a track inspector truck, while in the process of hi-railing to repair a broken rail. This collision caused injury to two (2) employees in the lead vehicle as well as property damage. Facts indicate that although weather was clear, however it was a cold 28° day and the rail was slick due to an earlier frost. The investigative hearing was held regarding this incident on February 28, 2018.

It is the position of the Carrier that the Claimant’s dismissal is appropriate discipline under the Individual Development and Personal Accountability Policy (IDPAP). The Carrier points out that the Claimant admitted to not checking the rail prior to hi-railing, which he is required to do under Rule 2502.1. Thus, the Carrier argues that the Claimant never took under consideration the weather conditions while traveling which violate the rule. In sum, the Carrier asserts that the

bottom line is that the Claimant was driving too fast and following too closely, violating Rule 712.21 and Rule 712.17. Thus, his reckless behavior precipitated this collision. Lastly, the Carrier further asserts that it presented substantial evidence and afforded the Claimant a fair and impartial hearing. Based on the foregoing, the Claimant should be dismissed.

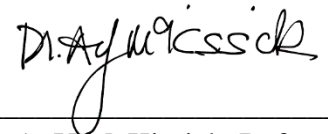
On the other hand, it is the position of the Organization that the Claimant was not provided a Union representative when he was required to submit his statement at the hospital. Moreover, he was not given a copy of this statement as well in violation of Rule 25. This procedural omission was corroborated by his wife, a firsthand witness, to this procedural irregularity, but contradicted by Road Master Sanders. The Organization points out that the Claimant is a long-term employee of eighteen (18) years with a good record. Although a Major Offense under the Individual Development and Personal Accountability Policy (IDPAP) allows one to be terminated, this Claimant should be given leniency under the circumstances presented. In addition, the Organization also points out that the Claimant was not adequately trained with the vehicle's air brake system which contributed to this collision under inclement conditions. Based on the foregoing, the Organization requests the Board to reinstate the Claimant.

OPINION OF THE BOARD:

After a careful analysis of the investigation, the Board finds that the Claimant should be reinstated, considering his long tenure, good work record and the fact that he was not provided a Union representative prior to writing his statement chronicling the event surrounding the collision. The record also indicates that he did not receive a copy of his statement as well. The Board also finds that the Claimant should not receive any back pay as he contributed to this collision, causing injuries and property damage. Accordingly, the Claimant is reinstated, but without back pay, for the delineated reasons.

AWARD:

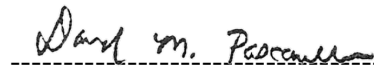
The claim is sustained. Claimant M. Reese is reinstated, but without back pay.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020