

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 400

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| 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. P. Smith, by letter dated May 2, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.7(a) and 104.10(1) was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 18-76202 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. Smith shall be fully exonerated of all charges brought against him, returned to service immediately and made whole for all hours lost including all credits and benefits due in his absence.”

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, P. Smith employed as a foreman for CSX for twelve (12) years was charged with leaving two (2) hours and fifteen (15) minutes early from his job and claiming pay for a job as work performed. Claimant admits to not having permission and not informing anyone as to his situation ahead of time of this claim. Claimant was seen parked in a Sleep Inn parking lot in Austintburg, Ohio with the vehicle no: 10670. This was recorded on video from the motel security camera. Claimant’s team of three (3) claimed eight (8) hours of straight work on the day in question. An investigative hearing was held on April 12, 2018.

It is the position of the Carrier that the Claimant’s violations constitute a Major Offense under the auspices of the Carrier’s Individual Development and Personal Accountability Policy

(IDPAP). Under this policy, misconduct warrants dismissal even for a first offense. Here, the Carrier further points out that the Claimant is culpable for dishonesty and theft of time and deserves dismissal. Lastly, the Carrier adds that the violations were supported by substantial evidence, as required.

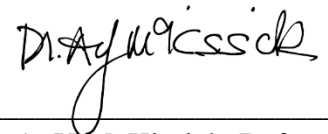
On the other hand, it is the position of the Organization that the Claimant and two (2) other workers on his team had established a pattern of working through lunch and exchanging the overtime for leaving early. Thus, this past practice was accepted and allowed by the Carrier. Most importantly, the record established that the gang had indeed worked through lunch for four (4) days that week and were not compensated at the overtime rate. Thus, the Organization argues that the Carrier did not meet the required burden of proof of substantial evidence. Specifically, the Organization points out that although the Claimant left early and without permission, he was not guilty of theft of time and was not dishonest. Based on the foregoing, the Organization requests the Board to reinstate the Claimant and make him whole.

OPINION OF THE BOARD:

After a careful analysis of the investigation, the Board finds that the Claimant should be reinstated based upon the past practice analysis presented. However, the Board finds that the Claimant did leave early and without permission. Accordingly, the Board further finds that the Claimant violated the aforementioned cited regulations. Nonetheless, the Claimant is a long-term employee with a good work record. Thus, he shall be reinstated, but without back pay.

AWARD:

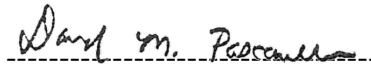
The claim is sustained. Claimant P. Smith is reinstated, but without back pay.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020