

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 401

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. R. Brooks, by letter dated May 23, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 712.15(5) and 712.25 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D06902818/18-09512 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Brooks shall have his personal record cleared of all mention of the matter, be immediately returned to service with rights and benefits unimpaired and be compensated for all loss suffered, including but not limited to any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline, as well as be remedied for any healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline.”

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 R. Brooks was a machine operator for CSX for fifteen (15) years without any prior disciplinary offenses, when on March 10, 2018 an incident in the Red Zone occurred. This incident happened while he was operating the TKO machine, which resulted in an employee’s foot being crushed. Specifically, the Claimant is charged with failure to verify his surroundings before inserting a tie next to an employee who was in fact injured. He was also charged with failure to safely operate machinery with the prohibition to not strike employees close by. The investigative hearing was held on April 4, 2018; a day later the Carrier sent out a charge letter.

It is the position of the Carrier that the Claimant was found guilty of a Red Zone violation which caused injury. The Carrier strongly asserts that this is categorized as an Individual Development and Personal Accountability Policy (IDPAP) Major Offense which carries a disciplinary penalty of dismissal upon the first offense. Here, the Carrier asserts, Claimant's actions were dangerous and he deserves dismissal, in spite of his tenure.

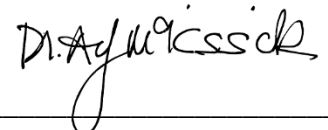
On the other hand, it is the Organization's position that the Claimant was instructed by the foreman to move the machine. However, prior to any movement, the Claimant checked his surroundings and again looked for his foreman for further confirmation when the injury to an employee occurred. Thus, the Organization asserts that the Claimant was just following the foreman's orders. In response to the Carrier's assertion that the Claimant should be dismissed for his first Red Zone violation, the Organization points out that this disciplinary remedy of dismissal is too harsh and unfair for the Claimant, a long-term employee of fifteen (15) years with an unblemished record.

OPINION OF THE BOARD:

After a careful analysis of the investigative hearing, the Board finds that the Claimant shall be reinstated, but without back pay. Although it was a Major Offense and the Claimant was culpable of the violations assessed, totality of his record prevails. However, the Claimant shall receive no compensation due to his culpability and the ensuing injury of another employee which could have been prevented, as required.

AWARD:

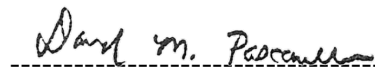
The claim is sustained. Claimant R. Brooks shall be reinstated, but without back pay for the aforementioned reasons.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020