

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 402

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. C. Jones, by letter dated February 20, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.2(a) and (c), 104.4(a), 104.7(a) and 104.10(1) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D01901618/18-71733 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Jones shall have the charge letter and all discipline 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 C. Jones, a fourteen (14)-year employee, was charged with theft of time when he claimed eight (8) hours of work for pay on December 26, 2017 and two (2) more hours on December 27, 2017. The record reflects that he did not work either day, but was on vacation. The record also reflects that he admitted that he failed to notify anyone of his improper payroll and admitted to making false statements. The investigative hearing was held on January 31, 2018. He was dismissed on February 18, 2018 for the aforementioned reasons of: dishonesty, concealment, leaving work before designated off-duty time and claiming pay unearned.

It is the position of the Carrier that this action of dishonesty and theft of time warrants dismissal because it comes within the category of a Major Offense, delineated in the Carrier’s

Individual Development and Personal Accountability Policy (IDPAP). As such, the disciplinary penalty is dismissal even for the first offense. The Carrier further asserts that the Claimant paid himself for eight (8) hours of work, when he only worked five and a half (5.5) hours. Based on the foregoing, the Carrier reasons that he should be dismissed.

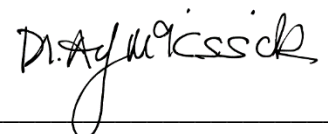
On the other hand, it is the Organization's position that the Claimant attempted to correct his payroll error by returning to work after the holidays and correcting it. However, the Organization further contends that the payroll department had at that point approved it. Thus, the Claimant was unable to correct his error. The Organization adds that the Claimant did perform various tasks related to his job on the dates in issue, such as: organizing his company vehicle and looking for bulletins. Lastly, the Organization requests that the Board take under consideration the Claimant's longevity on the job of fourteen (14) years of seniority in coming to a determination.

OPINION OF THE BOARD:

After a careful analysis of the investigative hearing, the Board finds that the Carrier presented a fair and impartial investigation and that it met its substantial evidence requirement through the Claimant's admissions of theft of time and making false statements. However, in light of his seniority of fourteen (14) years of service, the Board shall reinstate the Claimant, but without back pay for the violations cited.

AWARD:

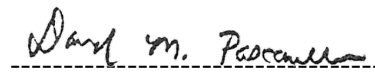
The claim is sustained. Claimant C. Jones shall be reinstated, but without back pay.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020