

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 7163**

**CASE NO. 403**

<b>PARTIES</b>	)	<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>
	)	<b>EMPLOYES DIVISION – IBT RAIL CONFERENCE</b>
	)	
<b>TO</b>	)	<b>VS.</b>
	)	
<b>DISPUTE</b>	)	<b>CSX TRANSPORTATION, INC.</b>

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. R. Hebert, by letter dated June 14, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.2(a) and 2007.3(1) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D32096918/18-24194 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Hebert 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. W. Hebert, a ten (10)-year employee of CSX, was charged with driving the Carrier’s vehicle without a valid license. The record reflects that he drove and purchased fuel for a CSX vehicle on seven (7) occasions and made false statements about having a suspended license on several occasions. Thus, the Carrier charged him with dishonesty for these egregious offenses by also violating state and local laws.

It is the position of the Carrier that such egregious misconduct under the Individual Development and Personal Accountability Policy (IDPAP) warrants dismissal even for a first offense. Here, the Claimant repeatedly made false statements concerning his suspended driver's license while purchasing gas and driving on at least seven (7) occasions. Based upon the foregoing, the Claimant deserves to be discharged without a doubt. The Carrier has submitted substantial evidence and met its burden of proof.

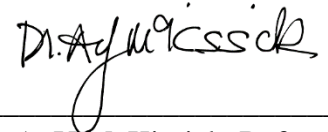
On the other hand, the Organization rebuts with procedural irregularities violative of Rule 25 Section 1(b), Rule 25 Section 1(c), Rule 25 Section 1(d), and Rule 25 Section 1(e). In sum, the Organization claims that there was: lack of notice, lack of an exact offense cited, not permitted a Union representative for cross-exam and failed to provide a fair and impartial hearing. Lastly, the Organization concludes that the Carrier failed to meet its burden of proof.

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

After a careful analysis of the investigative hearing, the Board finds that the Carrier presented substantial evidence, which supported the charges of dishonesty and failure to comply with federal, state and local laws while driving the Carrier's vehicle without a valid license. Based on this egregious misconduct, the Board finds that dismissal is the appropriate penalty for the circumstances presented.

### **AWARD:**

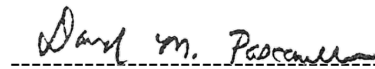
The claim is denied. Claimant R. W. Hebert is hereby terminated.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

**DATE:** February 27, 2020