

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 404

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. Wyndham, Sr., by letter dated June 19, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.13, 712.17 and 721.21 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D32025318/18-24009 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Wyndham, Sr. 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 M. Wyndham, Sr., a nine (9)-year hi-rail driver rear-ended a standing Carrier vehicle when he fell asleep, causing severe damage to that vehicle as he was traveling at an excessive speeding rate on May 31, 2018. The Claimant was dismissed on June 19, 2018. He was found to be careless and dangerous. Claimant admitted that he fell asleep and collided with a grinder putting himself and other employees at risk of life and limb.

It is the Carrier's position that the Claimant's misconduct constitutes a Major Offense under the Individual Development and Personal Accountability Policy (IDPAP). As such, one single offense could result in a disciplinary penalty of dismissal.

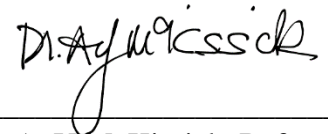
On the other hand, the Organization rebuts that the Claimant went to sleep because he suffers from sleep apnea as well as Type 2 diabetes. Specifically, he had been on duty for thirteen and a half (13.5) hours and had not been afforded a meal, as required by Rule 18 of the Agreement. His medication for diabetes requires one to ingest food prior to taking the medication. Based on the foregoing, the Organization requests leniency from the Board and the preservation of Claimant's nine (9) years of seniority.

OPINION OF THE BOARD:

After a careful analysis of the investigative hearing, the Board finds that the Claimant should be reinstated, but without back pay. The Board further finds that he must take responsibility for the collision and for his omission to protect his health by taking his medication, as required. In light of his seniority of nine (9) years and good work record, he will be afforded a return to work. Accordingly, the Claimant is reinstated.

AWARD:

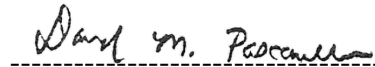
The claim is sustained. Claimant M. Wyndham, Sr., is reinstated, but without back pay for the aforementioned reasons.



Dr. A. Y. McKissick, Referee



Carrier Member



Organization Member

DATE: February 27, 2020