

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 420

PARTIES)
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TO)
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DISPUTE)
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**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

VS.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (time served, beginning March 9, 2018 and ending April 24, 2018) of Mr. C. Meyer, by letter dated April 24, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.7(a) and 104.10(1) was arbitrary, capricious, unnecessary and excessive (System File D91501918/18-30089 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Meyer’s discipline shall receive:
 - ‘1) Straight time for each regular work day lost and holiday pay for each holiday lost, to be paid in the rate of the position assigned to Mr. Meyer at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Meyer while unjustly suspended from the effective position);
 - 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was unjustly suspended from the effective position;
 - 3) Overtime pay for lost overtime opportunities based on overtime for any position Mr. Meyer could have held during the time he was removed from the effective rosters, or on overtime paid to any junior employee for work Mr. Meyer could have bid on and performed had the Carrier not unjustly suspended him from the effective position;

- “4) Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly suspended from the effective position.

Additionally, all notations of this improper suspension should be removed from all Carrier records.’ (Employees’ Exhibit “A-4”).

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. Meyer is a foreman for the carrier, when on March 7, 2018 he claimed pay for time not actually worked. Instead, the record reflects that he left work early and without permission. Thus, he was charged with the violations of CSX Transportation Operating Rules 104.7(a) and 104.10(l) and was assessed the discipline of a time-served suspension, beginning on March 9, 2018 and ending on April 24, 2018. Thus, this is an appeal by the Organization for this time-served suspension for such an excessive penalty that was also inappropriate and unwarranted.

It is the Carrier’s position that the Claimant committed a Major Offense, for which a single infraction can result in dismissal. Instead, the Carrier points out that the Claimant was only assessed a time-served suspension. Moreover, the Carrier asserts that consideration of all mitigating circumstances has already been evaluated. In sum, the Carrier further asserts that the catalyst for these violations was dishonesty that was manifested by the Claimant’s claim of the full eight (8) hours, when he knowingly left fifteen (15) minutes early.

On the other hand, it is the Organization’s position that the Claimant lacked the intent to be dishonest. Instead, the Organization asserts that the problem was a payroll error, just a mistake. Moreover, the Organization also asserts that the appropriate standard is not substantial evidence, but beyond a reasonable doubt. Thus, the Organization further contends that the Carrier failed to meet its burden of proof. Lastly, the Organization maintains that Operating Rules said to have been violated requires intent, which the Claimant did not have. Based on the above, the Organization requests that this Board sustains this claim.

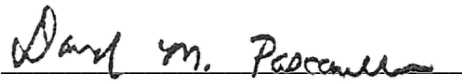
OPINION OF THE BOARD:

After a careful analysis of the record, the Board finds that the appropriate standard is substantial evidence, the civil standard, not beyond a reasonable doubt, its criminal counterpart.

In regards to Operating Rules 104.7(a) and 104.10(1), neither rule requires the showing of intent. As to the credibility of the Claimant, his record reflects three (3) prior non-major offenses since 2016. Since this is a Major Offense, based on the theft of time, it would seem that mitigation has already been applied. Accordingly, this claim must be denied.

AWARD:

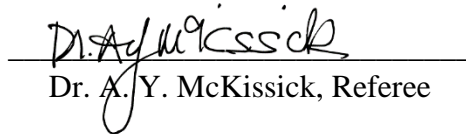
This claim is denied.



David M. Pascarella
Employee Member
BMWED-IBT



John Nilon, Esq.
Carrier Member
CSX Transportation Representative



Dr. A. Y. McKissick, Referee

DATE: February 9, 2021