

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 421

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 (dismissal) of Mr. J. Byrne, by letter dated May 2, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.7(a) and 104.10(l) was arbitrary, capricious, unnecessary and excessive (System File D91502118/18-22186 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Byrne shall be compensated:
 - ‘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. Byrne at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Byrne while unjustly removed from the effective rosters);
 - 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was unjustly removed from the effective rosters;
 - 3) Overtime pay for lost overtime opportunities based on overtime for any position Mr. Byrne could have held during the time he was removed from the effective rosters, or on overtime paid to any junior employee for work Mr. Byrne could have bid on and performed had the Carrier not unjustly removed him from the effective rosters;
 - 4) Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed 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 J. Byrne, a foreman, was hired on November 11, 2011. He is charged with theft of time because he left without permission from his supervisor from his job situs in derogation to Operating Rule 104.7(a). This incident was revealed by his roadmaster, based upon a video motel camera, revealing a CSX truck at the motel parking lot. All three (3) employees on the team claimed time eight (8) straight hours, but left two (2) hours and fifteen (15) minutes early.

The investigation hearing was held on April 12, 2018. On May 2, 2018, the Claimant was dismissed. On May 29, 2018, the Organization appealed. However, on August 8, 2018 the Carrier’s Highest Designated Officer (HDO) denied this appeal.

It is the position of the Carrier that theft of time is a Major Offense because it is based on dishonesty. Thus, the Carrier points out that this singular offense warrants dismissal, even on a first occurrence. Moreover, the Carrier argues that the Claimant admitted that he left early and did not have permission from his supervisor to do so. Lastly, the Carrier maintains that the Claimant purposefully omitted the usage of the payroll code, MEL, revealing his dishonesty. This code is customarily utilized to show when an employee trades his lunch for working late, commonly done in this industry.

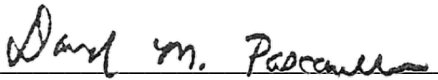
On the other hand, the Organization’s position is that the Carrier’s investigation was fundamentally flawed, as the Carrier outrightly and intentionally refused to comply with Rule 25. Besides this procedural deficiency, the Organization points out that the Carrier blocked the Claimant’s access to a book of records on the property, which could have shown the existence of this time-swapping arrangement, to prove his point. As to the alleged violation, the Organization further argues that the Claimant left work early on March 15, 2018, solely because his team co-worker’s wife received a cancer diagnosis. In haste, the Claimant rushed him to his wife and neglected to notify his roadmaster of this ongoing emergency. That is, the Organization maintains, that the Claimant was not dishonest and that this omission was innocently done. Thus, the Organization concludes that the discipline imposed was unwarranted. Lastly, the Organization submits that the burden of proof in a discipline dispute falls on the Carrier to produce substantial evidence. In this case, the Organization reasons that it failed.


OPINION OF THE BOARD:

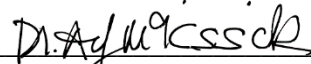
After a careful analysis of the record, the Board finds that the Claimant should be reinstated due to the exigent circumstances presented. However, he should not be given back pay.

AWARD:

Partially sustained. Claimant J. Byrne shall be reinstated, but without back pay. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.


David M. Pascarella
Employee Member
BMWED-IBT


John Nilon, Esq.
Carrier Member
CSX Transportation Representative


Dr. A. Y. McKissick, Referee

DATE: February 9, 2021