

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 423

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. J. Marshall, by letter dated November 27, 2018, in connection with allegations that he violated the CSX Code of Ethics and Transportation Operating Rule 103.7(f) was arbitrary, capricious, unnecessary and excessive (System File D32419618/18-91245 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Marshall shall be compensated:
 - 1) ‘Straight-time for each regular day lost and holiday pay for each holiday lost, to be paid in the rate of the position assigned to Mr. Marshall at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Marshall while wrongfully dismissed);
 - 2) Overtime pay for lost overtime opportunities based on overtime for any position he could have held during the time the Claimant was suspended from service, or on overtime paid to any junior employee for work the Claimant could have performed had the Claimant not been removed from service;
 - 3) Service time accrual reported to the Railroad Retirement Board (RRB) for all time the Claimant would have normally accrued days, months and years to include the monthly wages the Carrier would have normally reported to RRB for retirement calculations if not wrongfully disciplined to include overtime and double-time rates. Service time accrual shall also include vacation years and personal day accrual.

All notations of this 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. A. Marshall has been employed by the Carrier for eleven (11) years with no prior issues of discipline as a Track Inspector. He was charged with violating the CSX Code of Ethics and Transportation Operating Rule 103.7(f) which emanated from the theft of almonds as well as carrying a firearm on the Carrier's property while performing his duties. An investigative hearing was held on November 14, 2018 based upon this incident. Claimant was dismissed on November 27, 2018. Subsequently, the Organization appealed the same day. On January 1, 2019, the appeal was denied by the Carrier's Highest Designated Officer (HDO).

It is the Carrier's position that CSX Special Agent Reed confirmed the theft of five (5) boxes of almonds. This information, the Carrier asserts, was corroborated by Track Inspector Tutt who observed the Claimant's removal of such items which were later found in the Claimant's truck. In addition, the Carrier found that the Claimant was carrying a loaded firearm while he was on duty and on CSX's premises. Based on these above acts, the Carrier reasons that the Claimant breached CSX Rule 103.7(f) as well as CSX's Code of Ethics. Thus, the Carrier further finds that the Claimant must be dismissed to maintain a safe environment for its business.

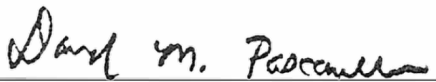
On the other hand, it is the position of the Organization that Track Inspector Tutt was the lone accuser, the sole witness. There was no corroboration, as required. Thus, the Organization asserts that this alleged theft does not meet the standard of substantial evidence, as required to proceed with a decision of termination. In regards to the firearm, the Organization contends that the Claimant was allowed to carry a firearm on his person in South Carolina, the situs of this occurrence, while being questioned. Although the Carrier asserts that its property was off-limits to firearms, the Carrier failed to follow South Carolina law on this matter. In sum, the Organization argues that the Claimant was in accordance with South Carolina, the place of the incident. In addition, the Organization points out that the Claimant is a long-term employee of eleven (11) years without a disciplinary record. Thus, termination is too severe and excessive for the charges presented. Lastly, the Organization also reasons that the Carrier failed to comply with Rule 25, Section 1(c) as it failed to allow union representation. The Organization also points out the Carrier's failure to comply with Rule 25, Section 1(d) by not stating the exact offense, as required. Based on the above, the Organization requests mitigation of this penalty of termination.

OPINION OF THE BOARD:

After a careful analysis of the evidence presented, the Board finds that the Claimant made two (2) admissions. First, he admitted that he knew it was wrong to have a firearm on CSX property. Second, he also admitted by way of testimony that he carried a concealed firearm while performing his duties. In light of these reasons and safety concerns, this Board must deny this claim.

AWARD:

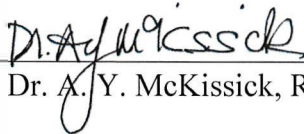
This claim is denied.



David M. Pascarella
Employee Member
BMWED-IBT



John Nilon, Esq.
Carrier Member
CSX Transportation Representative



Dr. A. Y. McKissick, Referee

DATE: February 9, 2021