

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 425

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. D. Harvill, by letter dated July 2, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.1 (3) and 712.17 was excessive, extreme, unreasonable and harsh (System File D70191318/18-23384 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Harvill shall be compensated for:
 - ‘1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the claimant while wrongfully suspended);
 - 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service;
 - 3) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was suspended from service, or on overtime paid to ar (sic) junior employee for work the claimant could have bid on and performed had the claimant not been suspended from service;

“4) health, dental and vision care insurance premiums, deductibles and co-pays than he not have paid had not been unjustly suspended.

All notations of the dismissal suspension should be removed from all carrier records.’ (Employee’s Exhibit ‘A-2’).”

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 D. Harvill was employed by the Carrier as a Bridge Tender. He has eighteen (18) years of seniority and without any prior history of discipline. On March 13, 2018, he was hailing north from Rigolets Drawbridge to Ansley Road Crossing as he was coming off duty and came upon the Pearl River Drawbridge. At that juncture, the Claimant struck the south lift rails while the lift rails were up thus causing injury to himself. He also damaged a CSX company vehicle beyond repair, while simultaneously delaying train traffic for approximately seven (7) hours. There was a formal investigation on June 12, 2018. On July 2, 2018, the Claimant was informed by the Carrier of his dismissal based upon the Claimant’s violation of CSX Transportation Operating Rules 100.1, 104.1(3), and 712.17.

It is the Carrier’s position that the Claimant was speeding and may have been asleep when he caused seventeen thousand dollars (\$17,000) in damages to CSX’s property. The Carrier points to data that the Bridge Supervisor introduced, which shows Claimant was traveling at thirty-four (34) miles per hour on impact in a twenty-five (25) miles per hour speed limit. Thus, the Carrier reasons that the Claimant clearly violated Rule 712.17 regarding speeding while operating on-track equipment. Most importantly, the Carrier asserts that this infraction constitutes a Major Offense, for which a single infraction can result in dismissal. In sum, the Carrier concludes that the Claimant’s actions were dangerous and irreparably damaged the Carrier’s ability to trust him. Thus, the Carrier reasons that this claim must be denied.

On the other hand, the Organization’s position is that the Claimant is not culpable of any violation. Specifically, the Organization points to the Carrier’s charging officer who admitted that he had no idea of how the numbers could be calculated. Thus, the Organization reasons that the Claimant cannot be charged with speeding. On the issue of Claimant’s negligence, the Organization points out that the lift rails were not visible through illumination of the flood lights from the bridge. Instead, the Organization further asserts, the area was dark, creating a “gap” or “void” in the observer’s visual field. Thus, the Organization concludes that the Carrier’s unproven

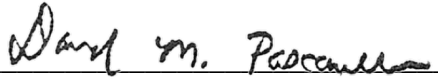
assumption cannot support its case nor carry its burden of proof. Lastly, the Organization notes that the Claimant is an eighteen (18) year employee who has no disciplinary offenses and deserves leniency because discharge is excessive under these circumstances.

OPINION OF THE BOARD:


After a careful analysis of the record, the Board finds that the Claimant was speeding and did violate Rule 712.17. However, the Claimant is also an eighteen (18)-year veteran employee with an exemplary record. Accordingly, the Claimant shall be reinstated, but without back pay.

AWARD:

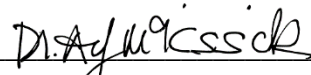
Partially sustained. Claimant, D. Harvill, shall be reinstated, but without back pay. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



David M. Pascarella
Employee Member
BMWED-IBT



John Nilon, Esq.
Carrier Member
CSX Transportation Representative



Dr. A. Y. McKissick, Referee

DATE: February 9, 2021