

PUBLIC LAW BOARD NO. 7163

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

vs.

CSX TRANSPORTATION, INC.

**Case No. 433
Award No. 433
Organization No. D06904018
Carrier No. 18-43278**

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. T. Littlefield, by letter dated July 20, 2018, in connection with allegations that he violated CSX Transportation Rules 100.1, 104.2(a), 104.7(a), 104.10(l) and the Code of Ethics was not pursuant to a fair and impartial hearing (System File D06904018/18-43278 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Carrier ‘*** must clear all mention of the matter from Claimant’s personal record, immediately return Claimant to service with rights and benefits unimpaired and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.’ (Employees’ Exhibit ‘A-2’).”

JURISDICTION

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

FINDINGS

The Carrier hired T. Littlefield (“Claimant”) on May 2, 2011. The investigative hearing for this incident was held on July 3, 2018. By letter dated July 20, 2018, the Carrier found Claimant culpable of violating CSX

Transportation Rules 100.1, 104.2, 104.7, 104.10, and the CSX Code of Ethics and dismissed him. Specifically, Claimant was determined to have falsified inspections for track from Helena to Parkwood Junction and left work early without permission on April 29, 2018. The Organization appealed Claimant's dismissal on August 3, 2018. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on October 17, 2018. The parties were ultimately unable to resolve the dispute and the matter is now before this Board for final adjudication. The applicable rules are as follows:

Rule 100.1, states:

Employees must know and comply with rules, instructions, and procedures that govern their duties. They must also comply with the instructions of supervisors.

When there is uncertainty, employees must:

1. Take the safe course, and
2. Contact a supervisor for clarification.

Rule 104.2(a), states:

Employee behavior must be respectful and courteous. Employees must not be any of the following: dishonest.

Rule 104.7(a), states:

Employees must have permission of a supervisor to: Leave work before designated off-duty time.

Rule 104.10(1) states:

Pay must only be claimed: 1. For actual time or work performed.

The CSX Code of Ethics outlines that an individual must not be inaccurate or untruthful in their accounting.

The Organization makes a procedural argument that the Carrier improperly held the hearing in absentia. The Carrier counters that hearings can be properly held in absentia if the Claimant is notified of the investigation but does not appear without a reasonable explanation. The Carrier's failure to postpone and reschedule the hearing in this instance clearly deprived the Claimant of his right to a fair and impartial investigation and denied him due process, it is argued.

The Organization also contends that the Carrier violated time limits because it did not charge Claimant within 30 days of the incident date. Specifically, the Carrier charged Claimant with wrongdoing occurring on April 29, 2018, and May 20, 2018, but only summoned Claimant to an initial hearing on June 21, 2018, which falls more than thirty (30) days outside of the date of the alleged incident in violation of the Agreement between the parties.

The Carrier counters that the established precedent holds the Carrier can charge within 30 days of first knowledge, especially for incidents where the Carrier does not uncover the facts because of a Claimant's dishonesty. Testimony by Roadmaster W.J. Wallace shows first knowledge did not occur until May 25, 2018, when he conducted a regular audit of GPS records and FRA track inspection records. Therefore, this objection is without merit.

On the merits, the Carrier contends that the relevant facts are not in dispute as the GPS and pay records show that on April 29, Claimant left work for the day without permission and, further, claimed pay for time he did not work. Claimant was provided with a fair and impartial hearing and the discipline was appropriate given the major offense charge and Claimant's record. The discipline is consistent with the IDPAP industry standards and it is a significant aggravating factor that just days before these rule violations, Roadmaster Wallace discussed with Claimant the importance of heat runs during that time of year, GPS monitoring on Carrier vehicles, and that employees are not to leave early without permission. Accordingly, the claim should be denied.


In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence *de novo*. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion.


The Board finds substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant. Claimant did not appear in his own defense during the investigation. He did not later inform the Carrier of an emergency or other circumstances that would reasonably justify resetting the

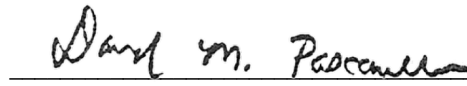
investigation date. The Carrier offered evidence sufficient to substantiate its charges and Claimant offered nothing in his defense. The Board finds no procedural violations that warrant disturbing the decision of the Carrier. Accordingly, the relief sought by the Organization is denied. The discharge shall remain on Claimant's personal record.

AWARD

Claim denied.


Jeanne Charles
Chairman and Neutral Member


John Nilon
Carrier Member


David M. Pascarella
Employee Member

Dated: 9/20/2021