

PUBLIC LAW BOARD NO. 7163

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

vs.

**Case No. 434
Award No. 434
Organization No. D33904118
Carrier No. 18-27886**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. M. Anderson, by letter dated August 23, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1(1), 104.3(d) and 104.3(e) was not pursuant to a fair and impartial hearing (System File D33904118/18-27886 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 including 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 M. E. Anderson (“Claimant”) on January 2, 2001. On July 19, 2018, a crane operated by Claimant had overturned while moving carts. The specifications for the crane Claimant operated required that all outriggers be down to support the machine while conducting heavy lifting. Claimant was offered a waiver for this incident which he had forty-eight hours within which to sign. However, prior to receiving the signed waiver agreement, Director of Structures J. Kearns notified

Claimant on the morning of July 27, 2018, that the waiver was being rescinded and an investigation would take place. This was confirmed in an email to the Hearing Officer, Dustin Bell and by letter to Claimant with a copy to General Chairman for the Organization, D.R. Albers on the same day. Despite receiving this notice, Claimant proceeded to fax the signed waiver to the Carrier on July 28.

The investigative hearing for this incident was held on August 9, 2018. During the investigation, the Director of Structures testified that only two of the four outriggers were down; Claimant was not wearing his seatbelt; and the crane was not operable after the incident and was still out of service as of the date of the hearing.

On August 23, 2018, Claimant was found culpable of violating CSX Transportation Rules 100.1, and 104.3 and the Carrier dismissed him from service. The Organization appealed Claimant's dismissal on August 27, 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 now comes before this Board for final adjudication.

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. Nothing in the waiver agreement or otherwise prevents the rescission of an offer of waiver. The evidence reflects that the waiver was rescinded prior to acceptance. The record reflects that Claimant admitted to failing to follow proper work procedure. There was no evidence presented to justify mitigating the penalty. Accordingly, the relief sought by the Organization is denied. The discharge shall remain on Claimant's personal record.

AWARD

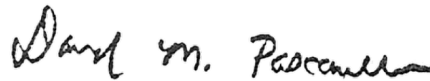
Claim denied.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



David M. Pascarella
Employee Member

Dated: 9/20/2021