

PUBLIC LAW BOARD NO. 7163

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

vs.

**Case No. 440
Award No. 440
Organization No. D601818
Carrier No. 18-76083**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Young, by letter dated June 22, 2018, in connection with allegations that he violated CSX Transportation Rules 104.2(a), 104.3(d) and 104.3(e) was arbitrary, capricious, unnecessary and excessive (System File D601818/18-76083 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Carrier ‘... must clear all mention of the matter from Mr. Young’s personal record, immediately return Mr. Young 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 as a consequence 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 J.A. Young (“Claimant”) on April 4, 2007. The Carrier determined that Claimant failed to properly inspect track defects and falsified track inspection reports. The investigative hearing for this incident was held on June 6, 2018. By letter dated June 22, 2018, the Carrier found Claimant culpable of violating

CSX Transportation Rules 104.2 and 104.3 and dismissed him. The Organization appealed Claimant's dismissal on July 3, 2018. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on December 12, 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 104.2 (a) states:

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

Rule 104.3(d&e) state:

The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities provided by CSX:

- d. Carelessness, incompetence, or willful neglect of duties, or
- e. Behavior that endangers life or property.

The Carrier contends it proved substantial evidence that Claimant violated the charged rules. He was provided with a fair and impartial hearing and the discipline was appropriate given the major offense charge and Claimant's record. Specifically, in 2014 Claimant lied about completing inspections and the dates he clocked in; in 2015 he was observed sleeping while on duty and in the middle of a meeting; and in 2012 he failed to have a valid CDL which was required for his position. Claimant is not trustworthy as he does not complete his inspections as alleged or as required by the FRA, the Carrier argues.

The Organization contends the discipline is procedurally defective in that in accordance with Section VII of the Track Inspection Agreement. That agreement requires charges involving willful misconduct be brought through the Carrier's Vice President of Engineering, after consultation with the designated Organization Vice President, which was not done. On this point, the Carrier counters that no objections were raised at the first opportunity which, at a minimum, was during the initial claim filing. As such, any objection raised on this procedural aspect of the Agreement was waived.

On the merits, the Organization argues that there was no substantial proof of falsification or Claimant's failure to find a defect. Even if he did fail to do so, the maximum penalty to be imposed for that type of violation is a 10-day suspension per the paragraph VII. A. of the Track Inspector Agreement.


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. The Board finds no evidence to justify mitigating the penalty or any procedural violations that warrant disturbing the dismissal. Accordingly, the dismissal shall remain on Claimant's permanent record.

AWARD

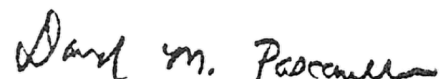
Claim denied.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



David M. Pascarella
Employee Member

Dissent to follow

Dated: 9/20/2021