

PUBLIC LAW BOARD NO. 7163

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

vs.

**Case No. 441
Award No. 441
Organization No. D602318
Carrier No. 18-44508**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Elliott, by letter dated July 12, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.2(a) and 104.10(l) was arbitrary, capricious, unnecessary and excessive (System File D602318/18-44508 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. Elliott’s personal record, immediately return Mr. Elliott 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.D. Elliot (“Claimant”) on August 8, 2011. The Carrier alleged that Claimant claimed pay for time not worked from May 7-11, 2018, and he was dishonest when asked his whereabouts from May 7-14, 2018. The investigative hearing for this incident was held on June 27, 2018. By letter dated July 12, 2018, the Carrier found Claimant culpable of violating CSX Transportation Rules 100.1, 104.2 and 104.10 and dismissed him. The Organization appealed Claimant’s dismissal on

August 6, 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 104.10(1) states:

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

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

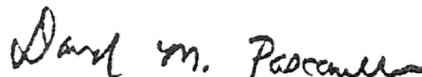
Claim denied.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



David M. Pascarella
Employee Member

Dated: 9/20/2021