

AWARD NO. 444

Case No. 444

Organization File No. D06905418

Carrier File No. 18-94082

**PUBLIC LAW BOARD NO. 7163**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
TO ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
)  
)  
DISPUTE ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. Williams, by letter dated October 29, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 100.1, 104.3(d)(e) and 2007.3(8) was arbitrary, capricious, unnecessary and excessive (System File D06905418/ 18-94082 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 health-care, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.' (Employees' Exhibit 'A-2')."

FINDINGS: The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Following a formal investigation at which he was charged with failing "to put a Company vehicle in park causing it to roll into a WSSB Roadmaster's vehicle causing damage," Claimant was

dismissed from service. It is undisputed that the vehicle that was assigned to Claimant on August 20, 2018, had rolled away and struck the truck belonging to Roadmaster Maxwell Hess, damaging both doors on the passenger side. According to Hess, Claimant told him that he had parked his truck on a concrete pad outside the office, but left the truck running and in neutral. The truck rolled downhill, with the front of Claimant's truck striking Hess's broadside. Claimant did not say anything to Hess about having applied the parking brake.

Roadmaster Hess reported this incident to Production Supervisor Ernest McWhite, who later went to the area where the accident had occurred and noticed there was a steep grade down from the concrete pad. McWhite testified he spoke to Claimant by phone and that he could not remember whether his truck was in park.

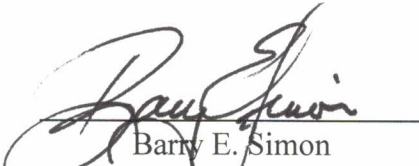
At the investigation, Claimant testified that he had applied the parking brake and left the vehicle in park. He said the truck was in neutral, though, when he found it wedged against the Roadmaster's truck. The Organization acknowledges that Claimant's truck hit the Roadmaster's, but argues the Carrier has not proven this was the result of anything Claimant did or did not do. Rather, it contends Claimant is a convenient scapegoat for something that had gone wrong.

The Board reminds the parties that we do not serve as the trier of fact. That responsibility is placed upon the Hearing Officer who presides over the investigation. We will overrule a Hearing Officer's determination only if we find that it was unreasonable. We can make no such finding in this case. On the one hand, there was testimony from Roadmaster Hess that Claimant had told him that he had left the truck in neutral, as well as Claimant's acknowledgment that his truck was in neutral after it struck the other truck. It was not until the investigation that Claimant said anything


to the Carrier about having put the truck in park and applying the parking brake. In the absence of any evidence that would suggest any mechanical failures on the truck, we must find that the Carrier had substantial evidence to support its charge against Claimant.

Our review of Claimant's record reflects that this is the third time he had been disciplined for a Serious offense in less than seven months. We find that the discipline imposed in this case was consistent with the principle of progressive discipline. We find no basis for modifying it in any manner.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
David M. Pascarella  
Employee Member

  
John Nilon  
Carrier Member

Dated: 8/9/21  
Arlington Heights, Illinois