

AWARD NO. 446
Case No. 446

Organization File No. D91410318
Carrier File No. 18-45892

PUBLIC LAW BOARD NO. 7163

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

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

1. The Carrier’s discipline (formal reprimand) of Mr. A. Barron, by letter dated November 20, 2018, in connection with allegations that he violated CSXT Crew Attendance Policy System (CAPS) was arbitrary, capricious, unnecessary and excessive (System File D91410318/18-45892 CSX).
2. As a consequence of the violation referred to in Part 1 above, ‘... the discipline of a Formal reprimand shall be removed from the Principle’s discipline record. Additionally, the Principle shall have all unfavorable marks removed from his attendance record. ***’ (Employees’ Exhibit ‘A-4’).

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.

On October 10, 2018 the Carrier directed Claimant to attend a formal investigation at which he was charged with “your responsibility, if any, in connection with information received on October 9, 2018, that you have reached or exceeded the threshold for discipline handling under

CSXT Engineering Attendance Point System (APS) Policy, on or about September 18, 2018, and all circumstances relating thereto.” The investigation was scheduled for November 6, 2018, and was held on that date. Following this investigation, Claimant was assessed a Formal Reprimand. The record of the investigation established that Claimant was absent from work on September 17 and 18, 2018. The Carrier’s policy allows employees to submit medical documentation for an absence within seven days of an absence. Claimant provided doctor’s notes for his absences, but not within the seven-day time limit.

The Organization first argues that the investigation was untimely. Rule 25 Section 1(d) of the parties’ Agreement provides, in pertinent part, “The hearing shall be scheduled to begin within thirty (30) days from the date management had knowledge of the employee’s involvement and such hearing shall not begin in less than ten (10) days from the date of the notice.” The Organization contends the Carrier had notice that Claimant might be in violation of the attendance policy when it did not receive medical documentation from him by September 26, the eighth day following his absence. The scheduling of the investigation for November 6, it says, violated the thirty-day time limit. In response, the Carrier asserts management did not have knowledge until October 9 that Claimant had exceeded the threshold of absences. It avers that the attendance policy is not administered locally, and that payroll finalization and administrative handling may delay the Carrier’s first knowledge of Claimant’s accrual of points under the Attendance Point System.

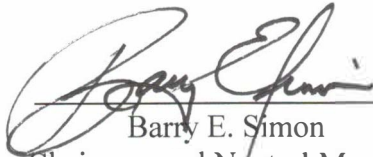
The Organization raised its timeliness objection at the beginning of the investigation. The Hearing Officer responded by reading the Notice of Investigation and then stating, “The way I read it, it shows that the information was received on October the 9th, and the letter was sent out on

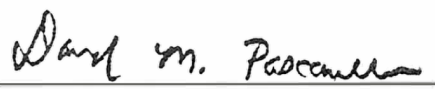
October the 10th. So your objection is noted for the record and is overruled, and we will proceed.”

No evidence or testimony was submitted to establish the date of the Carrier’s first knowledge.

If the Carrier’s first knowledge of Claimant reaching the threshold for discipline occurred on October 9, we would find that the investigation on November 6 was timely. However, when the incident giving rise to the discipline occurs more than thirty days before the investigation, there is a presumption that the investigation is not timely. That presumption is rebuttable, but the burden of proof is on the Carrier to establish the date of management’s first knowledge. That burden cannot be met simply by the Hearing Officer reading the date from the Notice of Investigation. There must be evidence, documentary and/or testimonial, to support the Carrier’s contention. In this case, there was none. We must, therefore, find that the Carrier scheduled and held the investigation in an untimely manner in violation of Rule 25 Section 1(d) of the Agreement. The discipline is to be rescinded.

AWARD: Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.


Barry E. Simon
Chairman and Neutral Member


David M. Pascarella
Employee Member


John Nilon
Carrier Member

Dated: 8/9/21
Arlington Heights, Illinois