

AWARD NO. 460
Case No. 460

CSX File: 19-49194
BMW File No.: N/A

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) IBT RAIL CONFERENCE
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

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

- "1. The Carrier's discipline (dismissal) of Mr. S. Hunt in connection with allegations that he violated CSXT Engineering Attendance Point System (APS) was arbitrary, capricious, unnecessary and excessive (Carrier's File 19-49194 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Hunt must be full exonerated of all charges brought against him and be made whole, including all benefits and credits."

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.

Claimant, S. Hunt, had been employed by the Carrier since June 6, 2005. At all times relevant herein, Claimant was working as a Machine Operator. On February 8, 2019, following an investigation, the Carrier found that Claimant had, on November 29, 2018, reached or exceeded the threshold for discipline handling under the Carrier's Crew Attendance Policy System (CAPS). The Carrier dismissed him from service.

CAPs is a no-fault attendance policy which assesses employees points for absences and credits for good attendance. When an employee assesses a certain number of points, he can be subjected to “handling,” which escalates to progressive discipline if the points continue to accumulate.

Claimant did not deny that he had been absent from work as alleged, and there is no dispute that by November 29, 2018, he had accumulated sufficient points to subject him to dismissal.

While the Organization advanced numerous procedural objections to the discipline assessed against Claimant, we find them unconvincing. On the merits, we conclude that the Carrier has met its burden of proving, by substantial evidence, Claimant’s guilt of the charges. However, we also find that, in the particular circumstances of this case, the penalty of dismissal is too harsh.

Following the hearing in this matter, the Neutral Chairperson issued a “bench order” requiring the Carrier to return Claimant to service. We now conclude that this reinstatement shall be without prejudice to seniority, but without backpay.

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

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Jacalyn J. Zimmerman".

Jacalyn J. Zimmerman
Neutral Member

A handwritten signature in black ink, appearing to read "Ross Glorioso".

Ross Glorioso
Organization Member

A handwritten signature in black ink, appearing to read "John Nilon".

John Nilon
Carrier Member

Dated: 8/16/2022