

AWARD NO. 462

Case No. 462

Carrier File: 19-24789

BMWE File No.: D600319

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. A. Wolfe, by letter dated February 28, 2019, in connection with allegations that he violated CSXT Crew Attendance Policy System (CAPS) was arbitrary, capricious, unnecessary and excessive (System File D600319/19-24789 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. Wolfe's personal record, immediately return Mr. Wolfe 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."

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, A Wolfe, had been employed by the Carrier since March 21, 2011. At all times material herein, Claimant was working as a trackman. On February 13, 2019, following an investigation, the Carrier found that Claimant had, on January 14, 2019, reached or exceeded the CAPS threshold for discipline handling. 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 number of points, he can be subjected to “handling,” which escalates to progressive discipline if the points continue to accumulate.

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, that Claimant had accumulated sufficient points at the time in question to subject him to dismissal. 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.

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Jacalyn J. Zimmerman
Neutral Member

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

Ross Glorioso
Employee Member

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

John Nilon
Carrier Member

Dated: 8/16/2022