

AWARD NO. 463

Case No. 463

LCAT No.: 19-68863

Organization File: D604718

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEE 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. Hoover, by letter dated December 26, 2018, in connection with allegations that he violated CSX Transportation Rules 100.1, 103.1, 104.3 and 700.13 was excessive, extreme, unreasonable and harsh (System File D604718/19-68863 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. Hoover’s personal record, immediately return Mr. Hoover 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, S. Hoover, had been employed by the Carrier since April 27, 2008. At the relevant time, he was employed as a tamper operator. On December 26, 2018, following an investigation, the Carrier found that Claimant had, on October 25, 2018, run through a switch with the tamper and thereafter knocked down a dwarf signal with a shadow board on the tamper while traversing through a turnout. The Carrier concluded that Claimant had violated CSX Transportation Rule(s) 100.1, 103.1, 104.3 and 700.13. Given the nature of the violations and Claimant's disciplinary record, the Carrier dismissed him from service.

The underlying facts of this case are not in dispute. Claimant acknowledged that he ran through the switch, and, although he denied hitting the dwarf signal, he admitted that it was on the ground following the incident. The record establishes that Claimant failed to line his route and visually confirm that it was lined. Although the incident occurred at about 11 a.m., Claimant did not notify his Roadmaster until hours later, and he attempted to conceal the incident by trying to repair the switch on his own, leaving it potentially unsafe for trains to travel over.

The Organization has raised numerous procedural objections to the discipline assessed against Claimant, but we find nothing which denied Claimant of his right to a fair and impartial investigation. On the merits, Claimant's admission and the surrounding circumstances are clearly sufficient for the Carrier to meet its burden of proving Claimant's guilt by substantial evidence.

With respect to the penalty, at the time of this incident Claimant was a 10-year employee with a lengthy history of incidents such as the ones at issue; Claimant's personal record shows six previous incidents, most involving vehicle accidents. We therefore cannot find the Carrier's decision that dismissal was appropriate to be an arbitrary or excessive exercise of its discretion to determine the appropriate level of discipline.

AWARD: Claim denied.



Jacalyn J. Zimmerman
Neutral Member



Ross Glorioso
Employee Member



John Nilon
Carrier Member

Dated: 8/16/2022