

AWARD NO. 465

Case No. 465

LCAT No.: 19-56364

Organization File: D91703219

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. Manns, by letter dated April 22, 2009, in connection with allegations that he violated CSX Transportation Rule 104.3(a) and CSX Ethics Policy was on the basis of unproven charges excessive, extreme, unreasonable and harsh (System File D91703219/19-56364 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, 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 (this amount is not reduced by earnings from alternate employment obtained by Mr. Manns while wrongfully dismissed). It also includes healthcare, credit rating, investment, banking, mortgage/rate or other financial loss suffered as a consequence of the discipline. Any general lump sum payment or retroactive general wage increase provided in any applicable Agreement that became effective while Mr. Manns was out of service."

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.L. Manns, had been employed by the Carrier since February 28, 2011. On October 22, 2019, following an investigation, the Carrier found Claimant guilty of, on March 13, 2019, directing profane language at a Roadmaster after being asked to stay behind after a job briefing. The Carrier found that Claimant had violated CSX Transportation Rule 104.3, which prohibits a) the use of boisterous, profane or vulgar language and b) altercations, as well as the Carrier's Ethics Policy. The Carrier dismissed him from service.

The Organization asserted that the Carrier committed various procedural errors, in violation of Rule 25 of the parties' Agreement, but we disagree that Claimant was denied his right to a fair and impartial investigation. On the merits, the testimony of Carrier witnesses at the investigation established that Claimant was angry and in fact directed insulting and profane language at his Roadmaster. The Carrier has met its burden of proving his guilt of that offense by substantial evidence.

With respect to the penalty, Claimant engaged in serious misconduct, properly classified as a major offense. However, the Carrier had asserted that Claimant also engaged in physically threatening behavior, and the record was not sufficient to meet the Carrier's burden of proving that violation by substantial evidence. We therefore find, under the particular circumstances of this case and in consideration of Claimant's personal record, that the penalty of dismissal is too harsh.

Following the hearing in this matter, the Neutral Chairman issued a "bench order" directing that Claimant be reinstated pending final resolution of this claim. We now find that such reinstatement will be with no prejudice to seniority but without backpay, and on a last chance basis with respect to the type of conduct involved herein.

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.



Jacalyn J. Zimmerman
Neutral Member



Ross Glorioso
Employee Member



John Nilon
Carrier Member

Dated: 8/16/2022