

**PUBLIC LAW BOARD NO. 7163**

**BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES  
DIVISION - IBT RAIL CONFERENCE**

**vs.**

**CSX TRANSPORTATION, INC.**

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**Case No. 476  
Award No. 476  
Organization No. DRA833375119  
Carrier No. 19-93867**

**STATEMENT OF CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (time served suspension) imposed upon Mr. H. Wright, by letter dated August 15, 2019, in connection with allegations that he was in violation of CSX Transportation Rules 104.2a, 104.3b, 104.2d, 104.3a and the CSX Code of Ethics was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File DRA833375119/19-93867 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 (sic) record, immediately return Claimant 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 to include, but not limited to, retirement service accrual and pension payments, healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the improper discipline.’ (Employes’ Exhibit ‘A-2’).”

**JURISDICTION**

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

## **FINDINGS**

The Carrier hired H. Wright (“Claimant”) on October 7, 2013. At the time relevant to the dispute, Claimant was working as an assistant foreman. On July 3, 2019, Claimant was discovered by the Manager Michael Small of the Hamlet Turnout Facility, sitting in a tool cart and wearing sunglasses. In an attempt to get Claimant’s attention, Small waived his hands in front of Claimant’s face and touched him, but Claimant was unresponsive. Small had to tap Claimant on the shoulder to get a response. Manager Small concluded that Claimant was asleep. Subsequently, Claimant was called into Small’s office for an informal coaching and counseling for his Operating Test (O-test) failure on Operating Rule 104.13 which prohibits employees from sleeping while on duty. Thereafter, Claimant and Small engaged in a verbal exchange wherein Small took Claimant’s statement that he would “fix” Small if he failed him on an O-test as hostile and as a threat. Small initiated an investigation because of this encounter.

The investigative hearing for this incident was held on July 16 and 29, 2019. Small testified that Claimant was dishonest about being asleep, and further that Claimant was quarrelsome; very animated by pacing back and forth; waving his hands about in an aggravated nature; and raising his voice. By letter dated August 15, 2019, the Carrier found Claimant culpable of violating CSX Transportation Rules 104.2, 104.3 and the CSX Code of Ethics and suspended him with time served amounting to a 47-day suspension. Specifically, the Carrier determined on July 3, 2019, at or near Hamlet Turnout Facility, while discussing an operational test failure for napping, Claimant was dishonest, insubordinate, quarrelsome and boisterous.

The Organization appealed Claimant’s dismissal on August 19, 2019. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on September 20, 2019. The parties were ultimately unable to resolve the dispute and the matter is now before this Board for final adjudication. The applicable rules are as follows:

Rule 104.2(a-b&d) states:

Employee behavior must be respectful and courteous. Employee must not be any of the following:

- a. Dishonest
- b. Insubordinate, or

c. quarrelsome.

Rule 104.3 states in relevant part:

The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities provided by CSX:

a. Boisterous, profane, or vulgar language[.]

The CSX Code of Ethics states:

Violence of any kind has no place at CSX. We will not tolerate: intimidating, threatening or hostile behavior.

The Organization makes several procedural arguments. First, the Organization argued that a proper 10-day notice of hearing was not given in violation of Rule 25, Section 1(d). The Carrier admits that the initial charge letter was dated July 8, 2019, with the initial hearing held July 16, 2019. The Carrier explains that this was due to a clerical error and notes that the Organization did not properly preserve this objection only objecting after the hearing had been in progress for nearly six (6) hours. Notwithstanding these facts, the error was cured when the Hearing Officer recessed and reconvened the hearing on July 29, 2019, through mutual agreement with the Organization, the Carrier asserts. It is the Carrier's position that this error did not impact the fairness or impartiality of the hearing and, therefore, does not serve to fully exonerate Claimant from his proven wrong-doing.

Second, the Organization argues that the Carrier violated Rule 25, Section 1 (b) because the Carrier had no right to remove the Claimant from service because this was not a major offense. Rule 25, Section 1 (b) requires the Carrier to give written confirmation to an employee that he is being held out of service when a major offense has been committed. Nothing in the July 8, 2019, charge letter mentions anything regarding a major offense, it is argued. The Carrier counters that the described incident put Claimant on sufficient notice that a major offense was being alleged. Thus, there was no violation of Rule 25, Section 1 (b).

Third, the Organization contends the Carrier violated the express due process rights when it failed to comply with Rule 25, Section 1(d), which states that employees who are accused of an offense shall be given reasonable prompt advance notice of the exact offense of which he is accused. The Organization objected to the fact that the July 8, 2019 charge letter did not cite the specific

rule violations allegedly committed by Claimant which denied him the right to a fair and impartial investigation. The Carrier contends that it is well established that such rules are not necessary to provide proper notice. The facts described in the charge letter are sufficient for Claimant to establish a defense to protect his due process rights.

Fourth, the Organization argues Claimant was deprived of a fair and impartial investigation when other than the hearing officer rendered the decision in this case, asserting that it is a well-established principle that the hearing officer is the proper individual to render a decision in discipline cases. The Carrier counters that argument is baseless and wastes the time and resources of all involved since hearing officers have never made a final ruling on discipline.

Finally, the Organization asserts that Claimant was further deprived of a fair and impartial investigation because the investigation was not held independent from the discipline hearing in violation of Rule 25, Section 1(c). The Carrier responds that the charge letter clearly puts Claimant on notice he was attending a proceeding that could result in discipline if the evidence proved he violated the rules. Whether the proceeding is called an investigation or hearing is immaterial. The terms are used interchangeably within the industry and the Claimant suffered no harm, it is argued.


On the merits, the Organization argues that the Carrier failed to meet its burden of proof that Claimant committed the offense. But, even if it is determined that he is culpable by this Board, the penalty imposed was excessive given his six (6) years of employment and no prior record of discipline.


In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence *de novo*. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain the charges. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion.


The Board finds that none of the procedural arguments raised by the Organization are a sufficient basis to overturn the discipline. On the merits, the Board finds substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant. The evidence reflects that Claimant interacted with a supervisor in a dishonest, insubordinate and quarrelsome manner. The record indicates that it is more likely than not that Claimant was asleep at the time he was approached by his supervisor. Small's testimony during the investigatory hearing was unshaken on this point. It is undisputed that Claimant was upset about the failed O-test. He also admitted that he was loud and talking with his hands. This is consistent with what the supervisor recounted. Thus, these charges were proven. However, given the Claimant's unblemished history at the time of the offense, a 47-day suspension was punitive. The purpose of discipline is to correct behavior that can be corrected. Because Claimant took no responsibility for his part in the exchange and because the proven charges here are quite serious, a suspension is warranted. Accordingly, a 14-day suspension shall be imposed, and the relief sought by the Organization is sustained, in part. Claimant shall receive back pay for days out of service in excess of fourteen days. The Carrier is ordered to make the Award effective on or before 30 days following the date the Award is transmitted to the parties.

### **AWARD**

Claim sustained, in part and in accordance with the Findings above.

  
Jeanne Charles  
Chairman and Neutral Member

  
John Nilon  
Carrier Member

  
Ross Glorioso  
Labor Member

Dated: 1/18/2022