

PUBLIC LAW BOARD NO. 7163

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

**Case No. 478
Award No. 478
Carrier No. 19-87295**

vs.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. J. Dam, by letter dated July 22, 2019, in connection with allegations that he was in violation of CSX Transportation Rule 707.2(8) was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 19-87295 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Dam shall be fully exonerated and made whole.”

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 J. Dam (“Claimant”) on May 16, 2011. The investigative hearing for an incident that took place on February 26, 2019, was held on July 2, 2019. Subsequent to the investigation, by letter dated July 22, 2019, the Carrier found Claimant culpable of violating CSX Transportation Rules 707.2.8 and dismissed him. Specifically, the Carrier determined that “on February 26, 2019, at approximately 1440 hours, in the vicinity of East Syracuse (NY), Claimant failed to post a warning sign on the Syracuse Siding

for eastbound movements to protect roadway workers from train movements from the Siding to #1 main.”¹

The Organization appealed Claimant’s dismissal on July 30, 2019. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on October 8, 2019. The parties were ultimately unable to resolve the dispute and the matter is now before this Board for final adjudication.

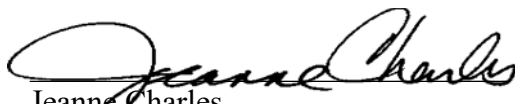
In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence *de novo*. As such, our function is not to substitute 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 charge. 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 substantial evidence in the record to uphold the Carrier's position regarding the charge against Claimant. Rule 707.2.8 states, “Before any member of the working group fouls or occupies the track within the working limits, the employee-in-charge must: Ensure signs are properly posted.” The rule is clear, and the Claimant failed to comply with it. On-track safety is extremely important as it permits Carrier crews to work safely. Claimant failed to adhere to the rule. Therefore, discipline is warranted. However, based on mitigating circumstances to include Claimant’s eight-year tenure with no recent discipline of record and his willingness to accept responsibility for his error, the Board finds dismissal to be excessive. While such errors could lead to termination in the future, Claimant shall be given the opportunity to correct his conduct. Accordingly, the relief sought by the Organization is sustained, in part. Claimant shall be reinstated with time served. No back pay is awarded. The Carrier is ordered to make the Award effective on or before 30 days following the date the Award is transmitted to the parties.


¹ Carrier Exhibit B, page 2.

AWARD

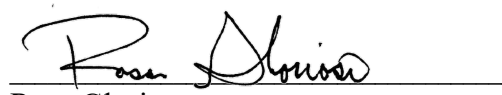
Claim sustained, in part.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



Ross Glorioso
Labor Member

Dated: 1/18/2022