

PUBLIC LAW BOARD NO. 7163

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

vs.

**NMB Case No. 513
Award No. 513
Organization No. DRA907519
Carrier No. 19-12968**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. N. Sharp, by letter dated November 5, 2019, in connection with allegations that he violated CSXT Crew Attendance Policy System (CAPS) was arbitrary, capricious, unnecessary and excessive (System File DRA 907519/19-12968 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 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 because of the discipline.’ (Employees’ 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 N. S. Sharp (“Claimant”) on June 4, 2018. By letter dated September 20, 2019, the Carrier directed the Claimant to report for a formal investigation into allegations that he reached or exceeded the threshold for discipline handling under

CSXT Engineering Attendance Point System (APS) Policy, on or about August 26, 2019. The investigative hearing for this incident was held on October 22, 2019. By letter dated November 5, 2019, Claimant was found culpable of violating the CAPS Policy and was dismissed from service.

The Organization appealed Claimant's dismissal on November 19, 2019. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on February 18, 2020. The parties were ultimately unable to resolve the dispute and the matter now comes 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. The Board finds substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant.

The Organization argues, in essence, that it is not clear that the Claimant ever actually entered Step 4 of the Carrier's CAPS Policy, or at the very least, he was totally unaware that he had based on his understanding of the CSX Crew Life website that he never reached or exceeded the threshold for discipline handling under the CAPS Policy. The Board is not persuaded that Claimant was unaware of his status. Carrier Exhibit A, which incorporates Carrier's Investigative Exhibit 4, is a screen print of the CSX Crew Life website page for Claimant. It clearly shows that Claimant was at Step 3 which resulted in receipt of a formal reprimand. The same page indicates that Step 4 is dismissal. Additionally, Claimant testified that he was aware that points can be assessed even if an absence is excused. Therefore, Claimant was on clear notice that he was subject to dismissal should he encounter another absence. The Carrier's decision to dismiss Claimant subject to the CAPS Policy was not arbitrary, capricious, unnecessary or excessive. The Board finds no procedural or other basis to disturb the Carrier's dismissal. Accordingly, the claim shall be denied.

AWARD

Claim denied.



John Nilon
Carrier Member



Jeanne Charles
Chairman and Neutral Member



Ross Glorioso
Labor Member

Dated: 1-11-2023