

PUBLIC LAW BOARD NO. 7163

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

vs.

**NMB Case No. 515
Award No. 515
Organization No. DA900220
Carrier No. 20-86586**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (time served suspension) imposed upon Mr. C. Brinson, by letter dated January 16, 2020, in connection with allegations that he was in violation of CSX Transportation Rules 100.1 and 103.2 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File DRA 900220/20-86586 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 C.J. Brinson (“Claimant”) on July 20, 1998. Claimant established and maintained seniority in the Carrier’s Maintenance of Way Department over the course of some twenty-one (21) years of service. During the time relevant to this dispute, the Claimant was assigned as an assistant foreman flagman. By letter dated November 15, 2019 the Carrier directed the Claimant to report for a formal investigation into allegations in connection with information received on November 12, 2010, that on seven (7) days from the dates of October 13, 2019 through November 1, 2019, inclusive, in the vicinity of Jesup, GA, Claimant drove the Carrier’s truck home and was using it for personal business on his days off after being instructed not to do so. This information came to light as the result of an audit conducted on the flagmen division vehicles.

The investigative hearing for this incident began on December 12, 2019. After a recess, the hearing was concluded on December 27, 2019. By letter dated January 16, 2020, Claimant was found culpable of violating CSX Transportation Rules 100.1 and 103.2 and was disciplined in the form of a time-served suspension which totaled sixty-two days without pay. The Organization appealed Claimant’s discipline. 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.

Rule 100.1, states in pertinent part: “Employees must know and comply with rules, instructions, and procedures that govern their duties.” Rule 103.2, states, “Do not use CSX equipment or communication systems unnecessarily or for unauthorized personal business.” There is no dispute that Claimant used the vehicle to travel to and from his home instead of leaving it at a designated depot or hotel. Jaime McCleese, Assistant Regional Engineer on the South Region testified Claimant did not fit into an exception allowing him to drive his vehicle home. As a result, Claimant violated Rules 103.2 and 100.1 because he drove his work truck to his personal residence and parked it there. The Organization contends Claimant did not violate either rule. It argues Claimant had the truck serviced on each night it was at his residence, and thus was not in violation of the rules.

The record reflects Claimant was driving his truck from his residence to a reporting location in the morning on the days in question. Claimant’s defense that the vehicle was being serviced nightly while parked at his residence is not persuasive. On Claimant’s behalf, the Organization provided a written witness statement from the purported mechanic who worked on Claimant’s assigned Carrier vehicle. In that statement, the mechanic states

he worked on the truck on one, not multiple days. Additionally, the mechanic does not list the day he worked on the truck or provide invoices showing when the work was performed. The evidence is persuasive that it is more likely than not that Claimant was using the vehicle to commute to and from his work location which violates Rule 103.2 since this was not for an authorized purpose. The Board finds no evidence that Claimant was using the vehicle on his days off for personal reasons. We find that progressive discipline is warranted. However, discipline should serve a corrective nature. A 62-day suspension being imposed under the circumstances in this case was excessive. Accordingly, the penalty is modified from a 62-day suspension to a 15-day suspension. Claimant shall be made whole.

AWARD

Claim sustained in accordance with the above Findings. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



Ross Glorioso
Labor Member

Dated: 1-11-2023