

PUBLIC LAW BOARD NO. 7163

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

vs.

**NMB Case No. 516
Award No. 516
Organization No. D603319
Carrier No. 19-54630**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Ferrell, by letter dated November 12, 2019, in connection with allegations that he violated CSX Transportation Rules 100.1, 104.1(1), 104.2(a)(d), 104.3(a)(d), 104.7(a), 104.10(1)(3) and CSX Code of Ethics on Workplace Violence was arbitrary, capricious, unnecessary and excessive (System File D603319/19-54630 CSX).
2. As a consequence of the violation referred to in Part 1 above:

‘... the Carrier must clear all mention of the matter from Mr. Ferrell’s personal record, immediately return Mr. Ferrell 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 as a consequence of the 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 J.S. Ferrell (“Claimant”), on February 6, 2006. Claimant established and maintained seniority in the Carrier’s Maintenance of Way Department. During the time relevant for this dispute, Claimant was working as a track inspector. By letter dated September 17, 2019, the Carrier directed the Claimant to report for a formal investigation into allegations that on September 7, 2019, at approximately 1200 hours in the vicinity of Cynthiana, Kentucky, he showed that he inspected the entire territory of the CC North, however, when cross referencing the GPS records with his inspection report, it was discovered he never inspected any of the mainline. Additionally, the Carrier alleged that upon being removed from service, he became very aggressive and made threats to a manager.

Following a postponement, the investigative hearing for this incident was held on October 23, 2019. By letter dated November 12, 2019, the Carrier informed Claimant that he had been found guilty of violating CSX Transportation Rules 100.1, 104.1(1), 104.2(a)(d), 104.3(a)(d), 104.7(a), 104.10(1)(3) and CSX Code of Ethics on Workplace Violence and was dismissed from service.

The Organization appealed Claimant’s dismissal by letter dated November 13, 2019. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on March 5, 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 Carrier’s records show Claimant never entered the rail on September 7, 2019. The GPS records showed Claimant’s day finished at 3:37 p.m. at the depot, rather than 7:30 p.m. which would be when his job finished for the day and he never requested authority to enter the mainline track, which he was required to do. Claimant’s defense is that he performed the inspection on September 5 and 6 but entered it into the system on September 7.


Additionally, Director of Track Cody Grupton, testified during the investigation that Claimant was quarrelsome when he was pulled from service and informed of the charges. Grupton testified that Claimant became emotional and told him to “watch his back” and he

(Claimant) “would be watching” Grupton and “not to mess up.” Grupton explained he was in fear when Claimant made “threats” to him, resulting in Grupton reporting the incident to the CSX police.

Claimant’s defense that he entered the inspection on the wrong day is less than credible. He had been employed with the Carrier for fourteen years at the time of the incident and was undoubtedly aware that inspection reports must be accurate and reflect the date upon which the inspection occurred. There is no evidence that he sought assistance with correcting the purported error. Further, his threat to supervisory personnel to “watch his back” is an aggravating factor. The Board finds that this behavior along with a disciplinary history that reflects similar misconduct, establishes that the dismissal was not arbitrary, capricious, or excessive. The Board finds no procedural basis for overturning the dismissal. For these reasons, the Board finds no basis to disturb the penalty imposed. Accordingly, the claim shall be denied.

AWARD


Claim denied.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



Ross Glorioso
Labor Member

Dated: 1-11-2023