

PUBLIC LAW BOARD NO. 7163

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

vs.

**NMB Case No. 517
Award No. 517
Organization No. D602719
Carrier No. 19-41811**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. B. Branham, by letter dated November 14, 2019, in connection with allegations that he violated CSX Transportation Rules 100.1, 104.2(A), 104.3(D), 104.10(1) and CSX Code of Ethics, was arbitrary, capricious, unnecessary and excessive (System File D602719/19-41811 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. Branham’s personal record, immediately return Mr. Branham 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.’ (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 B.B. Branham (“Claimant”), on January 17, 2011. 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 and had no history of any discipline. By letter dated August 9, 2019, the Carrier directed the Claimant to report for a formal investigation into allegations that at approximately 0700 hours in the vicinity of Cincinnati, Ohio, he falsified inspections claiming to inspect track that the GPS on his truck showed he was not near on July 25 and July 26, 2019. Additionally, the Carrier alleged that the Claimant paid himself for time not worked on July 24 and July 27, 2019.

Following three (3) postponements, the formal investigation was convened on October 29, 2019. By letter dated November 14, 2019, the Carrier informed Claimant that he had been found guilty of violating violated CSX Transportation Rules 100.1, 104.2(A), 104.3(D), 104.10(1) and CSX Code of Ethics and was dismissed from service.

The Organization appealed Claimant’s dismissal by letter dated November 14, 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. 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, but to rule upon whether the Carrier’s actions were unjust, unreasonable or arbitrary so as to constitute an abuse of the Carrier’s discretion. Absent such findings, we are not justified in disturbing the penalty.

A careful review of the record convinces the Board that there is substantial evidence in the record to uphold the Carrier’s determination regarding Claimant. There is no dispute that the reporting was inaccurate. Claimant’s defense is that he had been on duty for the prior twenty-five days straight without a day off and was overwhelmed. Claimant urges that he mistakenly entered the wrong information. As the Carrier points out, Claimant’s defense would require him to accidentally select multiple entries per inspection report on each day as shown in the inspection reports in evidence. Additionally, Claimant entered his own hours into the payroll system on two different days, which when taken with Claimant’s multiple inaccurate track inspection entries, his defense is less than credible. This credibility determination should go undisturbed based on the facts present here. 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