

AWARD NO. 518

Case No. 518

Organization File No. D90701220

Carrier File No. 20-19854

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
TO) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissal) of Mr. C. Burnham, by letter dated February 28, 2020, in connection with allegations that he violated CSX Transportation Rules 100.1, 103.2, 104.2, 104.7, 104.10, CSX Code of Ethics and CSX Travel Policy was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File D90701220/20-19854 CSX).
2. As a consequence of the violation referred to in Part 1 above,

As a remedy for the violation, the Claimant shall be reinstated to service, with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation, and health insurance benefits.

The Claimant shall be made whole for all financial losses [sic] as a result of the violation, including (but not limited to) compensation for:

1. Straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this amount is not reduce [sic] by earnings from alternate employment obtained by the Claimant while wrongfully removed from [sic] service);
2. Any general lump some [sic] payment or retroactive general wage increase provided in any applicable agreement that become effective while the Claimant was out of service.

3. Overtime pay for lost overtime opportunities base [sic] on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been removed from service.
4. Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service;
5. All notation of the dismissal should be removed from the Carrier records and the employee personal file.

FINDINGS:

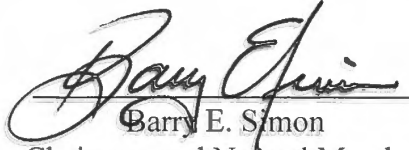
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.


Following an investigation at which Claimant was charged with paying himself for time not worked, keeping a hotel room while at home or on an off day, and failing to follow instructions when he drove home instead of staying in a hotel, Claimant was dismissed from service effective February 28, 2020. This investigation came about as a result of Senior Facilities Manager John Jarvis reviewing Claimant's GPS records, CLC hotel stays, and work orders, and comparing them with his payroll. Numerous inconsistencies were found, indicating that Claimant was being paid for time he had not worked, driving home when directed to use Carrier provided lodging, and having a hotel room even though he went home and stayed there overnight. As a foreman, Claimant input his own payroll. Claimant acknowledged his guilt of the various charges against him. At the end of the investigation, Claimant admitted his dishonesty.

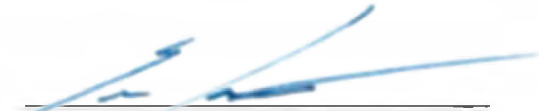
In view of Claimant's admissions, we must find that the Carrier had substantial evidence to support its charges against him. In determining the appropriate quantum of discipline, though, the Board has taken into consideration the fact that Claimant, at the time of this incident, had nearly twenty-six years of service with the Carrier, and had no prior discipline on his record. The Board is also satisfied that Claimant was sincerely remorseful for his actions. Accordingly, we find that the discipline imposed was excessive, and we will direct that Claimant be returned to service with seniority rights unimpaired, but without compensation for time lost. Claimant should understand that this is a last chance for him to demonstrate that he can perform service for the Carrier in full compliance with its rules and regulations. Any future violations of this nature will, most assuredly, result in his permanent dismissal. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be unpersuasive in this case.

In directing Claimant's reinstatement, it is not the Board's intent to minimize the seriousness of his offenses. Claimant obtained compensation for service not performed, and incurred other excessive expenses for the Carrier. Additionally, he failed to comply with explicit instructions from his supervisor. These are acts of dishonesty that go to the very core of the employment relationship. We have upheld numerous dismissals for offenses of this nature in the past, and will certainly continue to do so in the future. We have deviated from this practice in this case solely for the reasons stated above. Accordingly, this case should not be cited as a precedent for any reduction of discipline for similar offenses.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Ross Glorioso
Employee Member


Eric Caruth
Carrier Member

Dated: 9/29/22
Arlington Heights, Illinois