

**PUBLIC LAW BOARD NO. 7163**

<b>PARTIES</b>	)	<b>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES</b>
	)	<b>DIVISION - IBT RAIL CONFERENCE</b>
	)	
<b>TO</b>	)	<b>VS.</b>
	)	
<b>DISPUTE</b>	)	<b>CSX TRANSPORTATION, INC.</b>

**STATEMENT OF CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. M. Castleberry, by letter dated May 6, 2020, in connection with allegations that he was in violation of CSX Transportation Rules 104.1(2), 104.2(d) and 104.3(e) was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive and in violation of Rule 25 of the Agreement (System File DRA903720/20-63562 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Organization requests ‘\*\*\* the Carrier immediately remove any mention of this unwarranted discipline from Claimant’s personal record. Moreover, the Organization requests the Claimant be compensated for all lost compensation including 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.’ (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 M.W. Castleberry (“Claimant”) on March 5, 1982. The investigative hearing for the incident at issue was held on April 23, 2020. Subsequent to the investigation, by letter dated May 6, 2020, the Carrier found Claimant culpable of violating CSX Transportation Rules 104.1(2), 104.2(d), and 104.3(e) and dismissed him. Specifically, the Carrier determined that on March 25, 2020, at approximately 8:00 a.m., at or near Howells Yard, Claimant made an inappropriate comment to a fellow co-worker about spitting on doorknobs not caring who contracted COVID-19.

The Organization appealed Claimant’s dismissal by letter dated June 1, 2020. The appeal was denied by the Carrier on July 20, 2020. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process. The parties were ultimately unable to resolve the dispute and the matter is now 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, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain the charge. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion.

The Board finds substantial evidence in the record to uphold the Carrier's position regarding the charge against Claimant. Rule 104.1(2) states, in relevant part, that employees must assist and cooperate with other employees. Rule 104.2(d) requires, among other things, employees to be “respectful and courteous.” Claimant’s defense to the alleged behavior is that he was simply joking. Such joking during the onset of a global pandemic that resulted in the loss of millions of lives and had most people in a heightened state of concern for their health and the health of those whom they care about, was reckless and violated the core principle of being cooperative, respectful and courteous to fellow employees. The rules are clear, and the Claimant failed to comply with them. Accordingly, discipline was warranted. The Board finds insufficient evidence that Claimant actually endangered life or property. Therefore, a violation of Rule 104.3(e) is not sustained.

While Claimant’s conduct was serious and reckless, given Claimant’s 38-year tenure with no recent discipline of record, the Board finds dismissal to be excessive. Claimant shall be given the opportunity to correct his conduct. However, no back pay is

awarded. Accordingly, the relief sought by the Organization is sustained, in part. Claimant shall be reinstated with time served. The Carrier is ordered to make the Award effective on or before 30 days following the date the Award is transmitted to the parties.

**AWARD**

Claim sustained, in part and in accordance with the findings above.



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Jeanne Charles  
Chairman and Neutral Member



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John Ingoldsby  
Carrier Member



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Ross Glorioso  
Labor Member

Dated: December 19, 2023