

**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) of Mr. J. Auman, by letter dated July 10, 2020, in connection with allegations that he violated CSXT Engineering Attendance Point System Policy (APS), Rules 100.1 and 104.6.2 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (Carrier’s File 20-46681 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Organization requests that Claimant J. Auman ‘\*\*\* be fully exonerated of all charges brought against him including all lost compensation, credits and benefits.’ (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 J.C. Auman ("Claimant") on June 26, 2006. The investigative hearing for the incident at issue was held on June 25, 2020. Subsequent to the investigation, by letter dated July 10, 2020, the Carrier found Claimant culpable of violating CSX Transportation Rules 100.1, 104.6.2 and the CSXT Engineering Attendance Point System Policy (APS) on or about February 25, 2020. As a result, Claimant was dismissed.

The Organization appealed Claimant's dismissal by letter dated July 15, 2020. The appeal was denied by the Carrier on September 3, 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.

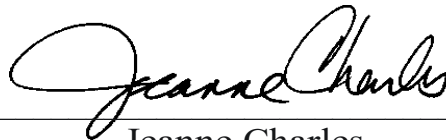
Under the APS, an employee receives 20 points per step, and receives coaching and counseling letters for the first two steps, a formal reprimand for step 3, and potentially dismissal for step 4. Employees are also given good attendance credits for every month they do not have attendance incidents. The Claimant was previously dismissed under step 4 and had been returned to work after a challenge to that decision. As it relates to the instant case, on January 13-14, 2020, Claimant was sick in a non-emergency medical event but provided documents for each day and received 4 total points; on January 22, 2020, Claimant was absent with permission and received 4 points; on January 23, 2020, Claimant was late to work and received 2 points; on January 27, 2020, Claimant was absent with permission and received 4 points; on February 5, 2020, Claimant was absent with permission and received 4 points; on February 18, 2020, Claimant was late and received 2 points; on February 25, 2020, Claimant failed to report and received 10 points. Claimant maintains that when the prior dismissal was overturned, he was reset to Step 1. He contends that he provided notice to his supervisor regarding the final occurrence that resulted in him reaching 20 points. Thus, he had not exceeded step 4 of the policy.

The Board does not find substantial evidence in the record to uphold the Carrier's position under the facts of this case. Given the confusion with respect to the step upon

which Claimant was returned and considering Claimant's lengthy employment, he shall be given one last chance to prove his ability to follow the attendance policy. The Board determines, Claimant shall be reinstated and placed at zero points. However, no back pay is awarded. Accordingly, the relief sought by the Organization is sustained, in part. 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.



Jeanne Charles  
Chairman and Neutral Member



John Ingoldsby  
Carrier Member



Ross Glorioso  
Labor Member

Dated: December 19, 2023