

**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. W. Keels, Jr., by letter dated June 11, 2020, in connection with allegations that he violated CSX Transportation Rules 100.1 and 2007.2.2 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA139120/20-19132 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Keels, Jr. shall now:

‘... be returned to service. It is respectfully that the dismissal letter and all matters relative thereto be removed from Mr. Keels (sic) personal file, and be made whole for all losses suffered including vacation and retirement, as a result of the Carrier’s actions.

As a remedy for the violation, the suspension shall be set aside and the claimant shall be made whole for all financial and benefit losses as a result of the violation. Any benefits lost, includin (sic) vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:

- 1) straight time pay 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 suspension from service (this amount is not reduced by any outside earnings obtained by the claim while wrongfully suspended);

2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service:

3) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was suspended 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 suspended from service;

4) health, dental and vision care insurance premiums, deductibles and co-pays than he (sic) not have paid had (sic) not been unjustly suspended.

All notations of the dismissal suspension should be removed from all carrier records.’ (Employees’ Exhibit ‘A-2’).”

## **FINDINGS**

The Carrier hired W.T. Keels (“Claimant”) on January 19, 2009. The investigative hearing for the incident at issue was held on May 27, 2020. Subsequent to the investigation, by letter dated June 11, 2020, the Carrier found Claimant culpable of violating CSX Transportation Rules 100.1 and 2007.2.2. Specifically, the Carrier determined that on April 28, 2020, at approximately 1:30 p.m., in the vicinity of Gary Pass Track, Claimant failed to follow instructions or procedure while operating grapple truck 620078, when he failed to have a seat belt on while operating the truck in Crow’s Nest. As a result, Claimant was dismissed.

The Organization appealed Claimant’s dismissal by letter dated July 2, 2020. The appeal was denied by the Carrier on October 1, 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 does not find substantial evidence in the record to uphold the Carrier's position under the facts of this case. As an initial matter, in its submission, the Carrier acknowledges that Claimant did not violate Rule 100.1. Therefore, the question before the Board is whether there was substantial proof that the Claimant violated Rule 2007.2.2 which states, in relevant part, "When riding in or operating a motor vehicle, employees must wear seat belts correctly when equipped except when in a hi-rail vehicle on the rail." Here, the rule is clear that employees are not required to wear a seat belt while in a hi-rail vehicle on the rail. The record establishes Claimant was in a hi-rail vehicle on the rail at the time in question. Thus, the Carrier has failed to substantiate the charge. Therefore, Claimant shall be reinstated and made whole. Accordingly, the relief sought by the Organization is sustained. 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 accordance with the findings above.



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Jeanne Charles  
Chairman and Neutral Member



John Ingoldsby  
Carrier Member

PLB No. 7163  
Award No. 539



Ross Glorioso  
Labor Member

Dated: December 19, 2023