

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to allow Mr. J. Hinnant to exercise his seniority in the Maintenance of Way Department after returning from a supervisory position beginning on February 6, 2020 and instead dismissed him without written notice or affording him a fair and impartial hearing as required by Rule 25 (System File DRA902020/20-13657 CSX).
2. As a consequence of the violation referred to in Part 1 above, ‘... the Carrier must clear all mention of the matter from Claimant’s personal record. 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 because of the discipline.’ (Employee’s Exhibit ‘A-1’).”

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.W. Hinnant (“Claimant”) on June 3, 2002, as a trackman. In 2005, Claimant became a management employee. On February 5, 2020, the Carrier dismissed Claimant for misusing his corporate procurement card which is a violation of the CSX Procurement Card Use Policy as well as the CSX Code of Ethics. Specifically, Claimant purchased tobacco products and other personal items on several days including a \$114.91 purchase on November 6, 2019, a \$53.75 purchase on November 10, 2019, and a \$55.00 purchase on October 17, 2019. Claimant, who was in a management position at the time, was dismissed in all capacities from CSX.

After being dismissed in all capacities Claimant attempted to make a displacement but was denied. The issue before the Board is whether the Carrier acted improperly when it dismissed Claimant in all capacities while serving in his management position. The Organization has alleged the Carrier improperly denied Claimant the opportunity to return to his craft position when he was dismissed in all capacities without a hearing. The Carrier contends that as a non-bargaining unit employee at the time of termination, Claimant could not invoke the contractual protection of his former craft position because he was no longer a CSX employee. Thus, the Carrier had the right to terminate Claimant “at will.”

The Organization appealed Claimant’s dismissal by letter dated March 27, 2020. The appeal was denied by the Carrier on August 31, 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. The Board finds substantial evidence in the record to uphold the Carrier's position. As an employee working in a supervisory capacity, Claimant was not subject to the collective bargaining agreement Rule 25 pre-dismissal protections at the time of his dismissal. The Board’s finding is also supported by arbitration precedent. *See* NRAB Third Division Award 36560 (Benn); NRAB First Division Award 26725 (Clauss); NRAB Third Division Award 36075 (Kenis).

Notably, this Board has previously held that a non-bargaining unit employee who is dismissed no longer holds employment status with the Carrier. Such an employee should not be considered attempting to exercise seniority rights to return to a covered position. *See*, PLB 7163 Award No. 469 (Zimmerman). Here, the Claimant’s status was also as an exempt employee at the time of termination, which did not afford him protections of Rule 25. The Board lacks jurisdiction over a dispute concerning an

exempt employee's dismissal. Therefore, for the foregoing reasons, the claim must be dismissed.

AWARD

Claim dismissed.



Jeanne Charles
Chairman and Neutral Member



John Ingoldsby
Carrier Member



Ross Glorioso
Labor Member

Dated: December 19, 2023