

**PUBLIC LAW BOARD NO. 7163**

<b>PARTIES</b>	)	<b>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES</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 White, by letter dated August 13, 2020, in connection with allegations that he violated CSXT Engineering Attendance Point System Policy (APS), was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA 905420/20-20362 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, immediately return Claimant to service with rights and benefits unimpaired and compensate him for all loss suffered. 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.’ (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 W.E. White (“Claimant”) on October 2, 2010. The investigative hearing for the incident at issue was held on July 28, 2020. Subsequent to the investigation, by letter dated August 13, 2020, the Carrier found Claimant culpable of violating CSXT Attendance Point System (APS). As a result, Claimant was dismissed.

The Organization appealed Claimant’s dismissal by letter dated September 3, 2020. The appeal was denied by the Carrier on October 2, 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.

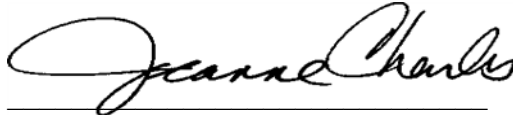
Under the APS, an employee receives 20 points per step, and receives coaching and counseling letters for the first two steps, a formal reprimand for step 3, and potentially dismissal for step 4. Employees are also given good attendance credits for every month they do not have attendance incidents. In the instant case, Claimant reached Step 3 in the policy when on May 14, 15 and 16, 2020, Claimant was marked off sick no pay, because he did not provide medical documentation to support his absence and received 4 points on each day bringing his total points to 12. On June 4, 2020, Claimant failed to report to work and received 10 points, bringing his total points to 22, exceeding the Step 4 threshold for potential discipline. Claimant contends that he was suffering with a fever on May 14, 15 and 16, 2020; was directed by a doctor not to come to the doctor’s office; and attempted to use vacation time to cover the absences on May 14, 15, and 16, but was denied.

The Board finds there is not substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant. We find that Claimant’s long work history, attempts to request vacation for the days he missed and the Covid-19 pandemic account as mitigating factors such that the absences here should not be a career-ending event. Accordingly, the relief sought by the Organization is sustained, in

part. Claimant shall be reinstated with a time-served suspension at step zero. 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