

**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 (time served suspension) of Mr. H. Wright, by amended letter dated August 28, 2020, in connection with allegations that he violated CSX Transportation Rule 712.25 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File DRA835048120/20-18799 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 to include, but not limited to, retirement service accrual and pension payments, healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the improper 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 H.D. Wright (“Claimant”) on October 7, 2013. The investigative hearing for the incident at issue was held on August 10, 2019. Subsequent to the investigation, by letter dated August 28, 2020, the Carrier found Claimant culpable of violating CSX Transportation Rule 712.25, resulting in a time-served suspension of approximately fifty calendar days. Specifically, the Carrier determined that during an incident which occurred on July 9, 2020, at approximately 10:00 a.m., while working at or near Hamlet Turnout Facility, Claimant was using a crane carrying a stick of rail and entered the red zone of three (3) employees with their backs turned in the opposite direction.

The Organization appealed Claimant’s suspension by letter dated August 29, 2020. The appeal was denied by the Carrier on October 29, 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 regarding the charges against Claimant. We find that while Claimant’s conduct appears to have violated the plain language of 712.25, it is unclear whether he was on clear notice of the rule as it relates to operating a crane.


The record reflects there had been some prior issue with interpretation of Rule 712.25 as it applies to cranes. Rule 712.25 states, “Operators of on-track equipment must not resume work when employees are located within the Red Zone of the equipment until holding a job briefing to establish safe work procedures. The roadway worker must remain in clear view of the machine operator at all times. If at any time the view is obstructed, the machine operator will stop operations immediately.” Claimant testified that he had been advised that a crane was not “on-track” equipment and, therefore, Rule 712.25 was not applicable. When asked during the investigation whether he was aware of the G 010A Operating Shop Cranes guidance, Claimant testified that “[w]e did, we never received that.” Tr. at 90. The Operating Shop Cranes guidance states:

Rules and Procedures cannot be written to cover everything we do in a specific task. Therefore, we are empowered to make decisions and take necessary action to prevent personal injuries. Where no specific rule or procedure applies, we must rely on good [judgment], following the safest course available. We may have to contact a co-worker, supervisor, or refer to a manual for guidance. G 010A Operating Shop Cranes (Carrier Exhibit 5).

Claimant further explained that “And he also told us, because Mr. Gardener was foreman, still is the foreman, he had several bullets wrote down on his job briefing form of stuff we needed to cover and get clarification on. He told us we were looking into the rules too deeply. It was written black and white, we was in the gray area on a bunch of the rules. And we never seen any verbals, all we got was verbal, we never seen written.” *Id.* Claimant’s testimony demonstrates unclarity regarding any specific rule regarding cranes. Given the confusion about the rules governing cranes, there is insufficient evidence that Claimant was on clear notice of the expectation for crane operation. As a mitigating factor, the manager was standing right next to Claimant when the rule violation occurred, but he failed to correct or stop Claimant’s actions. The manager waited several hours and failed Claimant on the O-test that triggered the investigation. This was unreasonable given the safety concern in question. Accordingly, Claimant shall be assessed a first offense reprimand and day of training to insure the applicable operating rules are made clear. Claimant shall otherwise be made whole. 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