

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. R. McKenzie, II to exercise his seniority in the Maintenance of Way Department after returning from a supervisory position beginning on January 22, 2020 and instead dismissed him without written notice or affording him a fair and impartial hearing as required by Rule 25 (System File FLO801320/20-90562 CSX).
2. As a consequence of the violation referred to in Part 1 above, ‘... the Carrier clear all mention of the matter from the Claimant’s personal record, immediately return Mr. McKenzie to service with all 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 wages with no reduction for outside earnings, as well as 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 as a consequence of this case. This would not only serve to reimburse the Claimant for his loss of wages but would also serve to protect the integrity of the agreement. Please advise when this claim will be allowed, and as to which pay period such payment will be made. This letter shall also serve as a request to list this claim for conference with the Carrier’s Highest Designated Labor Relations Officer.’ (Employees’ 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 R. J. McKenzie (“Claimant”) on December 8, 2008. On August 2, 2019, Claimant became a roadmaster which is a management position not covered by the collective bargaining agreement between the parties. However, he continued to retain and accumulate seniority within the Carrier’s Maintenance of Way Department as a dues paying member of the Organization. On January 21, 2020, the Carrier dismissed Claimant in all capacities for falsifying FRA inspection and remediation documents in violation of the CSX Code of Ethics. After being dismissed in all capacities Claimant attempted to make a displacement but was denied.

By letter dated March 13, 2020, the Organization filed a claim on Claimant’s behalf disputing the Carrier’s actions in denying Claimant the opportunity to exercise seniority rights under the collective bargaining agreement. By letter dated November 19, 2020, the Carrier denied the Organization’s claim. 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.

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. The Carrier contends that as a non-bargaining unit employee at the time of termination, Claimant could not invoke the seniority protections of the collective bargaining agreement because he was no longer a CSX employee. Thus, the Carrier had the right to terminate Claimant “at will.”

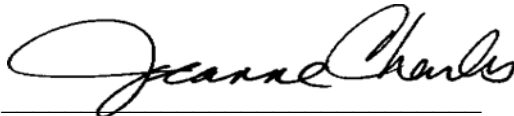
In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board finds substantial evidence in the record to uphold the Carrier's position. As an employee working in a supervisory capacity, 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 as an exempt employee at the time of termination, which did not afford him seniority protections under the collective bargaining agreement. 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