

AWARD NO. 557
Case No. 557

Organization File No.
Carrier File No. 21-13101

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissal) of Mr. B. Sapp, by letter dated April 1, 2021, in connection with allegations that he violated CSX Transportation Rules 100.1, 103.2, 104.7a and 104.10 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (Carrier's File 21-13101 CSX).

2. As a consequence of the violation referred to in Part 1 above:

‘... the Organization requests that B. Sapp be brought back to service of the Carrier and to be made whole, including all lost compensation, straight time, overtime and double time, that he would have performed and all credits and benefits.’

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Following a formal investigation at which he was charged with leaving work early and claiming pay for time not worked, as well as using a Company vehicle for personal matters, Claimant was dismissed from service effective April 1, 2021.

The Board's review of the record of the investigation shows that there is no dispute Claimant left work early without permission. With regard to his claiming pay for the time not worked, the Organization submits he entered his payroll incorrectly and had intended to make a payroll adjustment, but was unable to do so once he was removed from service. GPS records for his Company vehicle demonstrate that he had parked it in a parking lot for five hours and forty-six minutes and in his driveway for another two hours and twenty-six minutes on February 1, 2021, during which time he performed no work for the Carrier. Based upon this record, we must find that the Carrier had substantial evidence to support its charge against Claimant.

The Organization has raised three due process arguments that have previously been addressed by this Board. First, it asserts the Notice of Investigation was not proper because it did not cite the rules with which Claimant was charged with violating. We held in Award No. 365:

First, we find that the Carrier is not required to cite rules that might have been violated in its charge, unless the Agreement specifically imposes such a requirement. The applicable Agreement in this case does not. It is sufficient that enough facts are cited in the charge to enable the employee to understand the scope of the investigation and prepare a defense. We find that the Notice of Investigation in this case satisfies that requirement.

The Organization additionally asserts its request for a list of witnesses and the documentary evidence was denied by the Carrier. It also objects to Claimant being held out of service pending the investigation. We addressed both of these objections in Award No. 326, where we held:

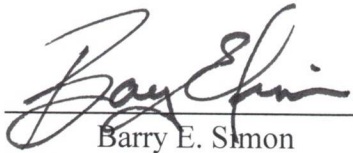
The Organization also objects to the fact that Claimant was withheld from service pending the investigation. The Discipline Rule of the parties' Agreement specifically permits the Carrier to hold an employee out of service pending the hearing "when a major offense has been committed." It is our conclusion that withholding Claimant from service in this case was authorized by this Rule.

Finally, the Organization contends the Carrier failed to provide it with any information ahead of the hearing, despite a direct request for such information. We find nothing in the Agreement that gives the Organization a right to discovery in disciplinary proceedings.


On the basis of our prior decisions, we must find that the Organization's objections are without merit. Further, we note that the Organization's effort to change the Agreement through arbitration is misplaced. Rather than litigate issues that have already been resolved by this Board, the Organization would be better advised to seek the changes it wants at the bargaining table.

Claiming pay for time not worked is an offense that warrants dismissal. It is a reflection upon the employee's honesty, and the Carrier should not be obligated to retain an employee whom it cannot trust. We find no basis for modifying the discipline imposed.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Ross Glorioso
Employee Member


John Ingoldsby
Carrier Member

Dated: March 18, 2024
Arlington Heights, Illinois