

PUBLIC LAW BOARD NO. 7163

CASE NO. 594  
AWARD NO. 594

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: F. Kisselstein

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STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. F. Kisselstein, by letter dated November 1, 2021, in connection with allegations that he violated CSX Transportation Rule(s) 104.2(a), 104.3 (d)(e), 104.4(a), 2000.1(4), 2007.2 (2), 2007.3 (1)(2), and 2007.3 (9) was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (Carrier’s File 21-71288 CSX).
  2. As a consequence of the violation referred to in Part 1 above Claimant F. Kisselstein shall now be returned to service immediately and be made whole including all lost compensation, credits and benefits.”
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FINDINGS:

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

Claimant, F. Kisselstein, established and maintained fifteen years of seniority in the Carrier’s Maintenance of Way Department. At the time of discharge, Claimant worked as a service

lane welder. While driving a Carrier vehicle on the New York State Thruway to his work assignment on September 14, 2021, Claimant moved from the right hand lane to the left hand lane, driving above the speed limit as he did so. Claimant and co-worker stated that the left lane was clear when Claimant moved lanes but that the driver in the left lane sped up as Claimant was moving. As a result, the front of the vehicle in the left lane came into contact with the back of the CSX vehicle; damage to the CSX vehicle was debatable. Claimant was cited for moving from the lane unsafely. The Carrier charged Claimant with an at fault accident. Following investigation, Claimant was dismissed on November 1, 2021.

The Organization contests the dismissal as well as several procedural matters related to the hearing. Turning first to the procedural arguments, the Organization contends that Carrier had no right to remove Claimant from service because this was not a major offense. Countless Boards have determined that 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." See Public Law Board 7163 Award No. 325 (Simon, 2019). It is our conclusion that withholding Claimant from service in these circumstances was warranted.

The Organization further contends that the Carrier unjustly removed Claimant from service without pay pending the outcome of a hearing. No evidence or arbitral authority was presented to support this assertion. Accordingly, the Organization has not met its burden of proof as to this argument.

The Organization next argues that Carrier did not give Claimant reasonably prompt advance notice of the exact offense of which Claimant is accused. Here, the September 23, 2021, letter (notifying Claimant of the hearing and withholding from service), referenced the September 14, 2021, vehicle accident and alleged inappropriate conduct. Although the rules were not cited

by number, the letter provided sufficient notice to prepare a defense. See Public Law Board 7163, Award No. 365 (Simon, 2019).

The Organization also argues that that Carrier deprived the Organization's ability to prepare a proper defense for Claimant by ignoring the Organization's request for 1) a list of any witnesses the Carrier intended to call who had not previously been identified, and 2) all exhibits, documents, and any other items the Carrier planned to enter at the hearing no later than five (5) days prior to the scheduled hearing. However, this Board has interpreted the Agreement to mean that the Organization does not have a right to review all investigative material prior to the hearing. See Public Law Board 7162, Award Nos. 325, 326 (Simon, 2019); Public Law Board 7529, Award No. 1 (Miller, 2012), citing Public Law Board 7008 Award Nos. 11, 18, and 21.

Finally, turning to the merits of the claim, it is the Board's conclusion that the Carrier had substantial evidence to support its charge of careless driving and speeding while in a Carrier vehicle. The penalty of dismissal is mitigated by the facts of this specific event, Claimant's fifteen years of seniority, his otherwise clean driving record, and his forthrightness during the investigation. Accordingly, Claimant is returned to work, without backpay, subject to return-to-work training.

AWARD:

Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within forty-five days.



Rachel Goedken  
Neutral Referee

Dated: Feb 11 2025



Casey Summers  
Employee Member



John Ingoldsby  
Carrier Member