

PUBLIC LAW BOARD NO. 7163

CASE NO. 599
AWARD NO. 599

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: T.H. Powell

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. T Powell, by letter dated June 28, 2021, in connection with allegations that he violated CSX Transportation Rule(s) 100.1 and 2007.3 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA 2035702421/21-08010 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’).”
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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, T.H. Powell, established and maintained seniority in the Maintenance of Way Department. At the time of the incident leading to his dismissal, he held the position of Machine Operator A and had nearly fifteen years of seniority.

On February 8, 2021, at approximately 10:30 am, Claimant backed a grapple truck near the 00H 321.31 road crossing and struck the crossing gate mast, resulting in approximately \$7500 damage to the crossing gate mast. Claimant acknowledged that the rear camera was working but that shadows across the screen in the cab obstructed his view of the rear.

Claimant did not contact his manager to report the event. Claimant believed management knew of the damage because following the event, a signal maintainer came to the crossing. Claimant asked the signal maintainer to let Claimant speak to the signal manager but the signal maintainer did not allow Claimant to do so. The signal maintainer talked by phone to various people for about twenty minutes, and said to Claimant, "I guess we know why you tried to flag me down," so Claimant believed management was aware of the situation. Claimant continued his work duties for that morning. He discussed the incident with his manager when his manager arrived approximately forty-five minutes later. Claimant accepted responsibility for backing into the crossing gate mast and cooperated in the investigation.

The Organization argues that the Carrier violated Rule 25 when it removed Claimant from service pending the outcome of a hearing. 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 325 (Simon, 2019). Withholding Claimant from service in these circumstances was warranted.

The Organization further argues that the Rule 25, Section 1(e) was violated when the hearing officer allowed the charging officer to question Claimant about a prior backing incident

on October 28, 2020. The Carrier states that the prior incident was used only to prove proper training and notice of rules. The prior incident is admissible for those purposes. However, it did not appear to show adequate training.

Claimant's record shows that several months earlier, on October 28, 2020, he backed into a crossing gate mechanism. He was given a Corrective Training Day on December 10, 2020. This included classroom work followed by an exam, on which Claimant scored 100 per cent, and a ride-along. The manager conducting the Corrective Training Day ride-along was also Claimant's manager on February 8, 2021. During the ride-along, no backing maneuver was performed. The manager acknowledged that backing would have been necessary on February 8, 2021.

Turning to the merits, Claimant admits that he backed into the crossing gate mast on February 8, 2021. Here, mitigating circumstances include Claimant's ride-along several months earlier which did not cover the very maneuver that led to the Corrective Day Training, as well as his seniority and his forthrightness in discussing the incident with his manager and during the investigation. Accordingly, Claimant will be reinstated without backpay except as necessary for Claimant to receive credit for Rail Road Board retirement benefits from date of discharge to date of reinstatement.

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