

**PUBLIC LAW BOARD NO. 7163
CASE NO. 616
AWARD NO. 616**

Brotherhood of Maintenance of Way Employees Division) of the International Brotherhood of Teamsters)

)
and) **Arbitration Decision**
) **and Award**
CSX Transportation, Inc.)
)
Carrier File: 22-22402)
BMWE File: DRA 404222)

I. STATEMENT OF THE CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. L. Lee, by letter dated July 27, 2022, in connection with allegations that he violated CSX Rules 104.10 and 104.2a was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA404222/22-22402 CSX).

2. As a consequence of the violation referred to in Part 1 above, '... the dismissal shall be set aside, and the Claimant shall me made whole for all financial and benefit losses that occurred beginning on July 28, 2022 and continuing. Mr. Lee's seniority will be reinstated without any lost time. Any benefits lost, including vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:

- 1) Straight time for each regular workday lost and holiday pay for each holiday lost, to be paid in the rate of the position assigned to Mr. Lee at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Lee while wrongfully dismissed);
 - 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Mr. Lee was out of service;

- 3) Overtime pay for lost overtime opportunities based on overtime for any position he could have held during the time Mr. Lee was suspended from service, or on overtime paid to any junior employee for work Mr. Lee could have performed had he not been removed from service;
- 4) Health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been dismissed.

All notations of this dismissal should be removed from all carrier records.' (Employes' Exhibit 'A-2')."

II. FACTS

The Claimant, L. Lee, was a machine operator in the Carrier's Maintenance of Way Department during the relevant time period.

On May 16, 2022, the Claimant was off work and did not receive the notice that the starting time on May 17, 2022, would be 06:00 instead of 07:00. The next morning, on May 17, 2022, before he left for work, the Claimant was notified by his coworker that there was an early start at 06:00 that day. When the Claimant arrived at Bedford Park, the reporting location, no one was there. Foreman J. Green was notified at 06:50 that the Claimant needed a ride from Bedford Park to the work site. While it is unclear from the testimony who contacted Foreman Green, Trackman S. Certa was instructed to go pick up the Claimant at Bedford Park around 07:00. Between 06:00 and 07:00, the Claimant had trouble clocking into the TimeTrax system. He then went on the computer to see if he could get his clock-in time to go through. He stated that by doing it that way, he could change his clock-in time from 06:52 to 06:00, when he stated he arrived.

E. Strohl, General Track Supervisor, was informed on May 23, 2022, that there was a discrepancy between Foreman Green's report stating that the Claimant arrived at 06:52 on May 17, 2023, and the Claimant's clock-in time of 06:00. He contacted the Claimant and asked him about the discrepancy. The Claimant assured him that everything was correct and that he was at the starting location, but had login issues with his phone.

IV. POSITIONS OF THE PARTIES

Carrier's Position

The Carrier contends that despite Claimant's assertions that he acted appropriately, the record does not support his claim that he was at the reporting location on time. It asserts that if the Claimant was honest, that he was unaware of the earlier start time, and entered his time accurately, he would not have been in this situation.

It notes that the Claimant was required to be familiar with the rules and procedures and knew, or should have known, the expectations as an employee to be honest and claim pay only for work actually performed. It contends that the Claimant was dishonest in claiming payment for time no service was performed, and the Carrier has established, by substantial evidence that the Claimant violated the Carrier's Rules 104.2(a) and Rule 104.10.

Organization's Position

The Organization contends that the Carrier failed to provide substantial evidence to prove that the Claimant violated Rules 104.2(a) or 104.10. It cites Mr. Strohl's admission that the allegations of dishonesty were "speculative." The Organization asserts that Mr. Strohl relied solely on secondhand accounts from Mr. Green and Mr. Certa. Their testimony was refuted by the Claimant. In this regard, while Mr. Green stated that the Claimant called him at approximately 06:50 to request a ride, the Claimant testified that he never attempted to contact Mr. Green on the morning in question, and that he spoke to employee S. Caldwell.

The Organization asserts that because the Carrier did not produce phone records or witness testimony to substantiate Mr. Green's statement that the Claimant contacted him to request that he be picked up at Bedford Park, there is a direct conflict with testimony that cannot be resolved in favor of the party who has the burden of proof.

V. DECISION

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 the Agreement dated March 20, 2008; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing held.

The Board finds that the Claimant's explanation for changing the clock-in time from 06:52 to 06:00 was insufficient, and he, in fact, arrived at 06:52. By changing the clock-in time, he violated the stated rules. The Board finds, however, that because he was not officially informed of the early start time, his tardiness is excusable. The Board finds that the penalty of discharge must be reduced to a 90-day suspension.

VI. AWARD

The claim is granted, in part.

1. The penalty shall be reduced to a 90-day suspension.
2. The Claimant shall be reinstated and made whole, including back pay, benefits, seniority, and minus interim earnings, subject to the practice on the property.
3. The Carrier is ordered to make the Award effective on or before 45 days following the date the Award is transmitted to the parties.



Casey Summers
Organization Member



John Ingoldsby
Carrier Member



Sheila Mayberry, Chair and Neutral Member
November 3, 2025