

PUBLIC LAW BOARD NO. 7163

CASE NO. 619
AWARD NO. 619

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: W. Mason

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (formal reprimand) of Mr. W. Mason, by letter dated October 31, 2022, in connection with allegations that he violated CSXT Crew Attendance Policy System (CAPS) was arbitrary, capricious, unnecessary and excessive (System File DRA 305222/22-73308 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Organization requests:

‘*** that the Carrier clear all mention of the matter from Claimant’s personnel record, immediately return Claimant’s 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 because of the improper discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered, to include railroad retirement accrualment (service months and contributions lost) because of the improper discipline.’ (Employees’ Exhibit “A-2”).”

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.

The Claimant established and maintained seniority in the Carrier's Maintenance of Way Department. During the time relevant to this dispute, Claimant was working as a Machine Operator. This case involves whether the Formal Reprimand issued to the Claimant for allegedly reaching or exceeding the threshold for discipline handling under the CSXT Engineering Attendance Points System Policy violated the parties' Agreement.

On June 14, 2022, the Claimant was provided notice that a formal investigation would be held "to develop the facts and place your responsibility, if any, in connection with information received on June 14, 2022, that you have reached or exceeded the threshold for discipline handling under the CSXT Engineering Attendance Points System (APS) Policy, on or about May 31, 2022, and all circumstances relating thereto."

Following a formal investigation into this matter held on October 13, 2022, the Carrier made several findings, including that on or about May 31, 2022, the Claimant reached or exceeded the threshold for disciplinary handling under the CSXT Attendance Points System (APS). Based on this finding, the Claimant was assessed Corrective Action of Formal Reprimand and notified of the decision by letter dated October 31, 2022.

In discipline cases, the Carrier has the burden to prove that there is substantial evidence that the Claimant engaged in the alleged misconduct. First Division Award 16785. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison v. NLRB*, 305 U.S. 197, 305 (1938).

In this case, the evidence establishes that the Carrier's APS Policy, which has been in effect since April 1, 2017, provides for the assessment of points for absences and "[a]n employee who accumulates at least twenty (20) points will be subject to progressive handling each time his/her point total reaches twenty (20) or more points," in accordance with an attendance handling schedule that provides for a Counseling Letter 1 at Step 1, a Counseling Letter 2 at Step 2, a Formal Reprimand at Step 3, and Dismissal at Step 4. There is also substantial evidence upon which to find that the Claimant had been issued Counseling Letters at Step 1 and 2 of the APS Policy and that he was absent without permission on May 31, 2022, bringing him to Step 3 of the APS Policy, which calls for the issuance of a Formal Reprimand. Thus, the Carrier has met its burden to provide substantial evidence that the Claimant violated its APS Policy.

The Organization argues that its appeal should be sustained because the Carrier did not provide the Claimant or the Organization with a copy of the hearing transcript, relying on Award 102 from this Board. In that Award, the Board concluded that "the Carrier violated the Agreement when it did not timely provide the Claimant with a copy of the hearing transcript." In that case, the Organization had requested a copy of the transcript and notified the Carrier that it was in violation of Rule 25(f) during the on-property handling of the case, but by the time the Organization received the transcript, the claimant had already exhausted his on-property appeals.

The material facts of this case are distinguishable from those in Award 102 and do not lead to the same conclusion. Here, the Carrier's October 31, 2022 notice to the Claimant advised that he had been assessed a Formal Reprimand and it states that the transcript with exhibits were

enclosed. The Organization submitted its appeal on November 3, 2022, arguing that the Claimant was not afforded the opportunity of a fair hearing due to the Carrier's denial of a motion for postponement on the grounds that the Claimant was not present and, therefore, he was unable to refute the charges of absenteeism brought against him. The appeal went to conference with the parties on December 14, 2022. At no time prior to submitting its appeal, in the appeal, or at conference, did the Organization inform the Carrier that it did not have a copy of the transcript or raise that issue as a procedural defense. The Carrier denied the Organization's appeal on January 12, 2023, and it was not until January 23, 2023—after the Carrier had rejected the Organization's appeal—that the Organization claimed in rebuttal that neither it nor the Claimant had received the transcript.

Although having a copy of a hearing transcript is an indispensable element in the preparation and drafting of an appeal, and the Carrier's contractual obligation to provide copies of it is clear, the Carrier should have been given the opportunity, upon notice by the Organization, to cure any unintentional failure to provide the transcripts, such as when it occurs due to a clerical oversight. The Organization did not request a copy of the transcript during the on-property processing of this case prior to submitting its appeal or put the Carrier on notice in its appeal or in conference that it had not received the transcript in violation of Rule 25, Section 1(f). In fact, the Organization's appeal letter of November 3, 2022, states that there were "several discrepancies thru the transcripts and carrier exhibits which the Organization has brought up." This statement may be "boilerplate," but, nevertheless, it implies that the Organization had access to the hearing transcript when it drafted the appeal.

AWARD:

Claim Denied.



Michael G. Whelan

Neutral Referee

Dated: 12/1/25



Casey J. Summers

Employee Member



Eric Caruth

Carrier Member