

PUBLIC LAW BOARD NO. 7163

CASE NO. 620
AWARD NO. 620

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 (dismissal) of Mr. W. Mason, by letter dated October 31, 2022, in connection with allegations that he violated CSXT Engineering Attendance Policy System (APS) was arbitrary, capricious, unnecessary and excessive (System File DRA 305322/22-15131 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 Claimant's dismissal 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 June 1, 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 June 1, 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 dismissed from service 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 and a Formal Reprimand at Step 3 of the APS Policy, and that he was absent without permission on June 1, 2022, bringing him to Step 4 of the APS, which calls for Dismissal. Thus, the Carrier has met its burden to provide substantial evidence that the Claimant violated its APS Policy.

The Organization argues certain due process violations, including 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 Board has considered the Organization's arguments and does not find that the Claimant's rights were violated. Specifically, concerning the Carrier's refusal to grant a continuance, the evidence shows that the hearing had been postponed three times before it occurred with the Claimant in absentia. Each time the hearing was scheduled to occur, the Claimant was provided notice, yet he failed to attend. The Organization argued that the Claimant could have been incapacitated somewhere and unable to attend and it provided evidence that the Claimant was admitted to a rehab center on June 12, 2022, before the charges had been administered. However, that same evidence shows that the Claimant was

discharged from rehab on September 13, 2022, well before the hearing on October 13, 2022. At that hearing, the hearing officer granted a recess for the Organization to attempt to locate the Claimant, but the Organization was unable to locate him. Under these circumstances, the Carrier was justified in conducting the hearing without the Claimant.

The Organization also argues that the discipline as imposed was arbitrary and unwarranted because the Claimant took the corrective measures necessary to rehabilitate himself by entering a treatment program and deserves a chance to once again prove himself as a valued employee. As noted above, the Claimant completed a rehabilitation program before the hearing to adjudicate this charge. The fact that the Claimant did not attend the hearing does not bode well for his claim that he wants to prove himself as a valuable employee. Finally, the Organization claims that a separate matter before this Board—Case 619—is essentially the same event, and the Claimant was not given an opportunity to correct his conduct in that previous case. Although it is an important feature of progressive discipline to allow employees the opportunity to learn from the disciplinary process to correct misconduct, in matters of continuing absenteeism that require formal adjudication—such as in the last steps of the APS Policy—it is not necessary to complete the adjudication of discipline for one absence before proceeding to the next step in the APS Policy when another absence occurs in the meantime. In addition, the Claimant had received two prior Counseling Letters before his absences leading to these two cases, so he had notice of the APS Policy and had an opportunity to correct his conduct.

AWARD:

Claim Denied.



Michael G. Whelan
Neutral Referee

Dated: 12/1/25



Casey J. Summers
Employee Member



Eric Caruth
Carrier Member