

PUBLIC LAW BOARD NO. 7163

CASE NO. 623
AWARD NO. 623

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: P. Paliani

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (time served suspension) imposed upon Mr. P. Paliani, by letter dated August 16, 2022, in connection with allegations that he violated CSX Rule 103.1.3 was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 22-71663 CSX).

2. As a consequence of the violation referred to in Part 1 above, Claimant P. Paliani shall now be fully exonerated of all charges brought against him and be made whole, including all benefits and credits.”

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 with twelve years of seniority. During the time relevant to this dispute, Claimant was working as a Welder Helper. This case involves whether the Claimant’s discipline violated the parties’ Agreement.

On May 17, 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 May 16, 2022, at approximately 15:00 hours, at or near the Frontier Office, you failed to keep CSX vehicle protected against unauthorized use or theft, failing to secure assigned vehicle on multiple occasions, and all circumstances relating thereto.”

Following a formal investigation into this matter held on July 27, 2022, the Carrier made several findings, including that the Claimant violated CSX Operating Rule 103.1.3 by failing to keep his assigned CSX vehicle protected against unauthorized use or theft, and failing to secure assigned vehicle on multiple occasions in connection with an incident that occurred on May 16, 2022, at approximately 1500 hours. Based on this finding, the Carrier issued the Claimant a formal corrective notification on August 16, 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 Claimant’s assigned truck was left unsecured on May 16, 2022, and that the Claimant had previously been tested on compliance with Rule 103.1.3—requiring Employees to keep CSX electronic devices, tools, keys or other property protected against unauthorized use or theft—and had passed that test. Thus, the Carrier has met its burden to provide substantial evidence that the Claimant engaged in the charged misconduct.

The Organization brings procedural defenses based on the Carrier’s alleged violations of Rule 25 of the Agreement. The Board has considered the Organization’s defenses and, for the reasons discussed below, it does not find that the Claimant’s rights were violated.

One of the Organization’s defenses is that the Carrier’s letter of Charge did not list the exact rule allegedly violated and, therefore, failed to comply with Rule 25, Section 1(d), which states that employees who are accused of an offense shall be given reasonable prompt advance notice of the exact offense of which he is accused. This defense relies on Award 392 of this Board. In that case, the Carrier charged an employee with leaving work prior to the end of a shift without permission, claiming pay for work not performed, and reckless operation of a CSXT vehicle at excessive speed, and he was found guilty of violating CSX Transportation Operating Rules 104.2(a) and 104.3. The Board found that “the Organization was not adequately provided advance notice of specific rules before commencement of the hearing, as required.” This finding may have been justified under the circumstances of that case, but the Board did not adequately explain its rationale that the contract language requires the identification of “specific rules,” which limits its value as precedent standing for the general proposition that the failure of the Carrier to notify the employee of the specific rules he or she allegedly violated is a violation of the Agreement and the employee’s due process rights.

Whether an employee has received adequate notification of an investigation involves two considerations. The first is the explicit requirements in the Agreement, and the second is that the employee must be provided with adequate information to prepare a defense, which is the apparent

rationale for the contractual requirements in the first place. The language in the Agreement addressing the notification requirement states that “[a]n employee who is accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused with copy to the union representative.” The plain language of the Agreement does not require advance notice of “specific rules.” Rather it requires notice of the “exact offense.” These terms are not synonymous and cannot be used interchangeably. Indeed, simply notifying an employee that he or she is accused of violating a “specific rule” often would not provide enough information for an employee to prepare a defense. For example, simply providing an employee with notice that he or she has violated CSX Operating Rule 100.1—a general rule addressing the duty of employees to comply with procedures that govern their duties—would be inadequate notice for the employee to prepare a defense without more information such as a factual description of the offense.

A workplace “offense” is employee conduct that violates policies, rules, or standards, and the “exact” offense is a particular incident of such conduct. When a notice of investigation includes a factual description of that incident that reasonably suggests employee misconduct covered by a specific rule or policy, it may be concluded that the employee has received constructive notice of the rule, policy or standard allegedly violated. Under these circumstances, the “exact offense” contractual requirement has been met, and adequate information has been provided to allow the employee to prepare a defense.

Constructive notice of many CSX Operating Rules may be provided in the description of alleged misconduct without citing the specific rules. For example, if an employee is notified of conduct involving theft of company property, battery, extortion, or other crimes, it is not necessary to the employee’s defense to notify the employee that such criminal conduct is explicitly prohibited by CSX Operating Rule 104.4. Similarly, if an employee is alleged to have engaged in profane or vulgar language while on duty on a particular date on CSX property, it would not be necessary to the employee’s defense to notify the employee that such conduct is explicitly prohibited by CSX Operating Rule 104.3.

On the other hand, the adage “the more the better” is apropos when providing notice of investigations and if the Carrier does not provide a factual description of an offense that clearly suggests that a specific rule or an element of that rule has been violated, then the notice should cite the specific rule. For example, an element of CSX Operating Rule 104.4 prohibits “[c]riminal conduct that may damage CSX’s reputation.” If the Carrier were to charge an employee for alleged criminal conduct that it believed damaged its reputation, the notice of investigation should either specifically identify Rule 104.4 or provide enough factual detail of the alleged damage to the Carrier’s reputation to reasonably suggest that the Carrier was basing its charge on that element in the rule.

In the instant case, the notice of investigation sent to the Claimant advised him that “on May 16, 2022, at approximately 15:00 hours, at or near the Frontier Office, you failed to keep CSX vehicle protected against unauthorized use or theft, failing to secure assigned vehicle.” CSX Operating Rule 103.1.1—the operating rule the Claimant was found to have violated—provides that “Employees must keep CSX electronic devices, tools, keys or other property: (3) Protected against unauthorized use or theft.” Thus, the notice given to the Claimant clearly provided a factual

description of that incident that mirrors the misconduct described in the rule. As such, the Claimant had constructive notice of the rule he allegedly violated, which met the “exact offense” contractual requirement and provided him with adequate information to allow him to prepare a defense.

The Organization also argues that the Carrier did not timely deliver the hearing transcript. Specifically, the Organization claims that after the hearing, the Carrier sent the notice of findings timely on August 16, 2022, but failed to send the correct transcript until the Organization brought this discrepancy to the Carrier’s attention on August 22, 2022, which is beyond the 20 days allotted by the CBA. The Organization relies on Award 102 from this Board, in which 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, after the Organization notified the Carrier that it did not receive a copy of the transcript, the Carrier promptly cured that procedural defect before the Organization filed its appeal. Indeed, after receiving a copy of the transcript, the Organization still had several days to review it before facing its own deadline for submitting an appeal and, therefore, it was not prejudiced by the delay in receiving it.

Finally, as to the Organization’s argument that the discipline as imposed was arbitrary and unwarranted, the record before us does not justify setting aside the Carrier’s judgement on the discipline imposed on the Claimant.

AWARD:

Claim Denied.



Michael G. Whelan
Neutral Referee
Dated: 12/1/25



Casey J. Summers
Employe Member



Eric Garuth
Carrier Member