

PUBLIC LAW BOARD NO. 7163

CASE NO. 624
AWARD NO. 624

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: J. Finch

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Finch, by letter dated October 17, 2022, in connection with allegations that he violated CSXT Crew Attendance Policy System (CAPS) was arbitrary, capricious, unnecessary and excessive (System File DRA704222/22-23066 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Finch 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 sixteen years of seniority. 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 August 26, 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 August 26, 2022, that you have reached or exceeded the threshold for discipline

handling under the CSXT Engineering Attendance Points System (APS) Policy, on or about August 25, 2022, and all circumstances relating thereto.”

Following a formal investigation into this matter held on September 28, 2022, the Carrier made several findings, including that on or about August 25, 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 17, 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 handing 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 August 8, 2022, and August 25, 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 that the Carrier committed certain due process violations that impeded his ability to prepare a defense, including that the Carrier 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. Further, relying on Award 392 of this Board, the Organization argues that the Carrier’s failure to cite any specific rule violations within the notice of investigation denied the Claimant his right to a fair and impartial investigation. The Board has considered the Organization’s arguments and, for the reasons discussed below, it does not find that the Claimant’s rights were violated.

In Award 392, 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, where 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 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 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 identified the specific policy under which he was facing discipline—the APS Policy—and it described the particular incident of misconduct involved—his absence on August 25, 2022. Under these circumstances,

the Claimant was notified of the exact offense of which he was accused, which was sufficient for him to prepare a defense. Therefore, it was not necessary for the Carrier to cite CSX Operating Rules 100.1 and 104.6 in the notice of investigation, as argued by the Organization. This is because, as described above, CSX Operating Rule 100.1, is too general in nature to put the Claimant on notice of his alleged offense, and CSX Operating Rule 104.6—although more relevant to Claimant's absenteeism because it requires employees to report for work at a designated time and place and take certain actions if they are unable to do so—was not as specific as to his alleged misconduct as the APS Policy.

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 Caruth
Carrier Member