

PUBLIC LAW BOARD NO. 7163

CASE NO. 625
AWARD NO. 625

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: J. Thompson

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Thompson, by letter dated May 3, 2022, in connection with allegations that he violated CSX Rules 104.2(a), 104.4 (a) and CSX Code of Ethics, Fraud and Theft was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File D601422/22-44083 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Thompson shall now have all mention of this matter cleared from his record and be immediately returned to service with all rights and benefits unimpaired and compensated for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline.”

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 twenty-one years of seniority in the Carrier’s Maintenance of Way Department. During the time relevant to this dispute, Claimant was working

as a Vehicle Operator. This case involves whether the Claimant's dismissal violated the parties' Agreement.

The incident that led to the Claimant's dismissal occurred on February 7, 2022. On that date, the Claimant is alleged to have removed a sweatshirt from company property that did not belong to him.

On February 9, 2022, the Claimant was provided notice that an investigation would be held "to develop the facts and place your responsibility, if any, in connection with information received February 8, 2022, that on February 7, 2022, at approximately 12:50 hours, at or near Yard Office, you were caught on camera removing a sweatshirt from company property that did not belong to you and was dishonest and concealed facts regarding the incident."

Following a formal investigation held on April 13, 2022, the Carrier made several findings, including that on February 7, 2022, the Claimant removed a sweatshirt from company property that did not belong to him. When questioned over the phone by Track Supervisor Francis Nicholas about the incident, Claimant denied having taken the item, but at the hearing, Claimant admitted he took the sweatshirt without permission. Claimant also testified that during the phone conversation with Mr. Nichols he thought Mr. Nichols was talking about a different item. Upon consideration of these findings, the Carrier determined that the Claimant took the sweatshirt without permission in violation of CSX Rules 104.2(a), 104.4 (a), and CSX Code of Ethics, Fraud and Theft, and, on May 3, 2022, the Claimant was notified that he was being assessed Corrective Action of Dismissal from service.

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).

The Organization claims that the Claimant did not attempt to hide or conceal the sweatshirt when he walked out of the supply closet and that his actions were not done in a deceptive or covert manner and that the Carrier has not met its burden to prove the dishonesty charge because it did not show clear and convincing evidence of intent to deceive. Nevertheless, the Claimant admitted during the on-property investigation that he took the sweatshirt without permission. It is well-established that when an employee admits guilt, there is no need for further proof. See Public Law Board 7841, Award 1; Public Law Board 6006, Award 108; Third Division Award 40855; Third Division Award 28484; and Fourth Division Award 4779. Thus, at a minimum, the Carrier has met its burden to prove by substantial evidence that the Claimant took the sweatshirt without permission in violation of its rules.

The Organization also claims that if the Board were to determine that the Carrier did meet its burden of proof, the discipline imposed was arbitrary and unwarranted because Claimant was an extremely long serving employee of the Carrier with over twenty-one years of discipline-free service and his actions were not malicious or willful and do not warrant the ultimate penalty of dismissal.

Dismissal is the most severe disciplinary penalty, so it is appropriate for the Board to consider the employee's work record and any extenuating circumstances involved in this case. Based on the seriousness of the Claimant's rule violations, severe discipline, including dismissal, is warranted. However, in consideration of the Claimant's twenty-one years of service and other factors, the Board is persuaded to reduce the Claimant's discipline to a sixty-day suspension without pay, and he shall be reinstated with back pay except for the period of his suspension.

AWARD:

Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award effective on or before 45 days following the date the Award is transmitted to the parties.



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



Casey J. Summers
Employe Member



Eric Garuth
Carrier Member