

PUBLIC LAW BOARD NO. 7163

CASE NO. 627
AWARD NO. 627

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: G. Cole

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. G. Cole, by letter dated March 28, 2023, in connection with allegations that he violated CSX Operating Rules 100.1, 104.10(1), 104.2(a), 104.4(a), 104.6(1), 104.6(2) and 107.7(c) was arbitrary, capricious, unnecessary and excessive (Carrier’s File 23-60447 CSX).
 2. As a consequence of the violation referred to in Part 1 above, Claimant G. Cole shall now be fully exonerated of all charges brought against him and be made whole, including all benefits and credits.”
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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 nearly eighteen 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 violated the parties’ Agreement.

On January 30, 2023, 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 January 25, 2023, that on January 24, 2023, at approximately 0636 hours, at or near Oak Point, you claimed pay for hours not worked, and all circumstances relating thereto.”

Following a formal investigation into this matter held on March 8, 2023, the Carrier made several findings, including that on January 18, 2023, the Claimant sent a text to other employees informing them that he did not feel well and would meet them later at the job site by travelling in his personal vehicle. Rather than report to the work location, the Claimant drove home instead and clocked in on that day as having performed service from 0700 hours until 1530 hours, claiming pay for time not worked, in violation of CSX Operating Rules 100.1, 104.10(1), 104.2(a), 104.4(a), 104.6(1), 104.6(2) and 107.7(c). Based on these findings, the Carrier dismissed the Claimant on March 28, 2023.

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).

Based on a review of the evidence in this case, the Carrier established that the Claimant claimed pay for time he did not work. The fact that the Claimant may have been unable to get to work and he became ill does not serve as a valid justification for claiming pay when he did not report to work. Thus, the Carrier has met its burden to provide substantial evidence that the Claimant engaged in the alleged misconduct.

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. Although the nature of the Claimant’s misconduct warranted dismissal, in consideration of the Claimant’s seniority and other circumstances, his dismissal shall be reduced to a suspension without back pay and he shall be reinstated.

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
Employee Member



Eric Caruth
Carrier Member