

PUBLIC LAW BOARD NO. 7163

CASE NO. 628  
AWARD NO. 628

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

and

CSX Transportation, Inc.

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Claimant: J. Hayter

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Hayter, by letter dated February 13, 2023, in connection with allegations that he violated CSX Operating Rule(s) 103.3, 104.4, 104.10 and CSX Code of Ethics - Fraud and Theft was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File D606022/23-76702 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Hayter shall now have all mention of this matter cleared from his personnel record, be immediately returned his rights and benefits unimpaired and compensated 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 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.”

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

as a Track Inspector. This case involves whether the Claimant's dismissal violated the parties' Agreement.

The incident that led to the Claimant's dismissal occurred on September 18, 2022. On that date, the Carrier alleged that the Claimant removed mainline ballast that was later discovered at his personal residence.

On September 28, 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 that on September 18, 2022, at approximately 13:00 hours, at or near Carleton, MI, you participated in criminal conduct of the unauthorized removal of mainline ballast, and was later discovered to be located at your personal residence, and all circumstances relating thereto."

Following a formal investigation into this matter held on January 25, 2023, the Carrier made several findings, including that on September 18, 2022, a call was received by CSX Police providing information that two individuals were observed loading ballast from CSX property in Carleton, MI, into a trailer. CSX Police conducted an investigation to identify the owner of that trailer and determined that the ballast removed from the CSX Yard was at Claimant's residence. The Claimant called CSX police and informed them he had removed the ballast without permission, which he also admitted during the hearing. These actions were done during Claimant's shift on the incident date. Based on these findings, the Carrier determined that the Claimant violated CSX Operating Rule(s) 103.3, 104.4, 104.10 and CSX Code of Ethics - Fraud and Theft, and, on February 13, 2023, the Claimant was notified that he was being dismissed 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).

In this case, the Claimant admitted during the on-property investigation that he removed mainline ballast to his residence for his own use. 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, the Carrier has met its burden to prove by substantial evidence that the Claimant violated the rules cited in the Carrier's notice of discipline.

Nevertheless, the Organization claims that the Claimant's testimony revealed that he was open, honest and forthright about what had transpired, there can also be no doubt of his desire to return to the service of CSXT, and the penalty of dismissal is arbitrary and unwarranted in light of the Claimant's seventeen years of discipline-free service with the Carrier.

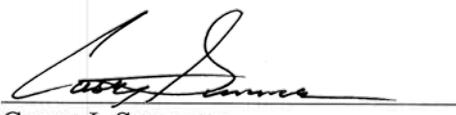
Dismissal is the most severe disciplinary penalty, so it is appropriate for the Board to consider the employee's work record and any extenuating circumstances involved in this case. Based on the seriousness of the Claimant's rule violations, severe discipline, including dismissal, is warranted. However, the Board is persuaded that the Claimant's work record and other

circumstances should be applied to mitigate the severity of the discipline to the most severe penalty short of dismissal. Accordingly, the Claimant's 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  
Employe Member

  
Eric Caruth  
Carrier Member