

PUBLIC LAW BOARD NO. 7163

CASE NO. 629
AWARD NO. 629

Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: D. Turner

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. 1. The Carrier’s discipline (dismissal) of Mr. D. Turner, by letter dated March 27, 2023, in connection with allegations that he violated CSX Operating Rules 100.1, 104.1(1), 104.2(a), FRA Track Safety Standards Part 213, and MWI 105-13 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA 300623/23-79721 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Turner shall now have all mention of this matter cleared from his personnel record, be immediately returned his rights and benefits unimpaired and compensate 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 because of the improper discipline. It also includes healthcare, credit rating, back pay, investment, banking, mortgage/rent or other financial loss suffered, to include vacation entitlements, railroad retirement accruement (service months and contributions lost) because of the improper 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 seniority in the Carrier's Maintenance of Way Department with about sixteen years of seniority. 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.

On February 21, 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 on February 16, 2023, at approximately 1200 hours, at or near Camak, GA, when it was found during a random audit that between the period of January 30, 2023, through February 14, 2023, while working 5ADK, you falsified FRA Track Inspections; you failed to perform the duties assigned as a Track Inspector, and all circumstances relating thereto."

Following a formal investigation into this matter held on March 9, 2023, the Carrier made several findings, including that on February 16, 2023, an audit of FRA track inspection reports the Claimant prepared covering the period of January 30, 2023, through February 14, 2023—that was done by comparing reports he entered into the MEL system with the GPS records of his company truck—revealed discrepancies on each of the twelve working days during the review period. The GPS records also established several instances where the Claimant was off his territory and at various stores or locations where no inspections were performed. The Carrier concluded that the Claimant's failure to devote his on-duty time exclusively to the service of the Company and falsely attesting to completing inspections in FRA and Company records in the track inspection reporting system, established that he failed to comply with FRA regulations and Company policies regarding proper performance of his duties as a Track Inspector in violation of CSX Operating Rules 100.1, 104.1(1), 104.2(a), FRA Track Safety Standards Part 213, and MWI 105-13. Based on these findings, the Carrier notified the Claimant on March 27, 2023, 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).

The Carrier alleged that the Claimant falsified FRA records and failed to perform duties assigned to a Track Inspector. The Claimant admitted to some of the charged misconduct. Specifically, he admitted that he conducted personal business on Company time, which is a violation of CSX Operating Rule 104.1(1). He also admitted that he did not report all his inspections on the day they were prepared, which is a violation of MWI 105-13, and he admitted that he did not correctly indicate in inspection records whether the tracks were traversed by vehicle or inspected on foot, which is a violation of FRA Track Safety Standards Part 213. The reasons that the Claimant gave to attempt to excuse these violations were not compelling and it is well-established that when an employee admits misconduct, no further proof is necessary. 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. As to the other charged misconduct involving dishonesty in violation of CSX Operating Rule 104.2(a), there is substantial evidence supporting that charge based on the Conducting Officer's credibility determinations, which should

not be disturbed absent compelling reasons. Thus, the Carrier has met its burden to provide substantial evidence that the Claimant engaged in the alleged misconduct.

Nevertheless, the Organization argues that the Carrier violated Rule 25 of the Agreement because it brought charges against the Claimant alleging willful misconduct without the Carrier's Vice President of Engineering consulting with the Organization's Vice President as required by the CSX Transportation Labor Agreement No. 12-064-10 (the "Track Inspector Agreement.") This argument is not persuasive because the relevant language in the Track Inspector Agreement is clearly intended to protect Track Inspectors from being unfairly charged for failing to note a defect or take remedial action when they have in fact performed required inspections. The protections of that agreement do not apply to circumstances—including those presented here—where an employee does not perform the inspections and then falsifies records claiming that he or she has completed the work.

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. The Organization submits that the Claimant made a mistake in judgement, but he did not exhibit any gross misconduct or act with any nefarious intentions, while the Carrier submits that its trust in the Claimant has been broken due to his dishonesty and the seriousness of his misconduct does not justify leniency. After considering these positions, it is concluded that the Claimant's misconduct involved dishonesty and serious safety concerns, which do not warrant setting aside the Carrier's judgment on the penalty of dismissal.

AWARD:

Claim Denied.


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


Casey J. Summers
Employe Member


Eric Caruth
Carrier Member