

**PUBLIC LAW BOARD NO. 7163**

**Award No. 630  
Case No. 630**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**and**

**CSX TRANSPORTATION, INC.**

**STATEMENT OF CLAIM**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier’s discipline (dismissal) of Mr. R. Gardner, by letter dated February 15, 2023, in connection with allegations that he violated CSX Operating Rule 104.2 and the CSX Family and Medical Leave Act Policy was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA837712823/23-07597 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, the Organization requests that the Carrier:**

**‘... clear all mention of the matter from Claimant’s personal record, immediately return Claimant to service with 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 as a consequence of the discipline to include, but not limited to, retirement service accrual and pension payments, healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the improper discipline.’ (Employees’ Exhibit ‘A-2’).’**

**FINDINGS**

**Public Law Board 7163, upon the whole record and all the evidence, finds that the parties to this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934. This Public Law Board has jurisdiction over the dispute involved herein. Parties to this dispute were given due notice of hearing thereon.**

**Claimant was hired in 2008. He had no active discipline in his record. He had FMLA certification for intermittent use. On November 29, 2022, he worked for one hour and then marked off for a medical appointment. According to the Carrier, on that same day he was seen engaging in personal activities, including apparent work in his private business transporting equipment and attending to his laundry business, when expected to be attending a medical appointment.**

**The Carrier alleges that on November 29, 2022, Claimant marked off work to attend a medical appointment while the investigation revealed that he spent the day on personal business. “Investigation revealed the medical visit asserted to by Claimant could not be verified leading to the conclusion Claimant never attended an appointment for which he utilized FMLA leave. Based on the evidence and testimony presented, the Hearing Officer found the Carrier witnesses’ testimony to be credible, as evidenced by the discipline assessed. This credibility determination should not be disturbed absent compelling reasons; here, there are none.” This is a Major Offense and justifies termination.**

**The Organization argues that Claimant was not given a fair and impartial hearing. Further, the Carrier has not met its burden of proof. The investigator’s report does not include any information about what Claimant did from 7:05 AM to 8:14 AM or after around 9:03 AM. The Carrier’s assertion that Claimant was engaged in personal business is pure speculation. Claimant testified that he did go to a medical appointment for one hour on the day in question and he provided a medical note to document his testimony.**

**The Board has carefully reviewed all of the documents submitted by the parties during their on-property handling of this matter. We find that the Carrier has sustained its burden of proof. The investigator’s report clearly establishes that at least between 8:14 and 9:03, Claimant was claiming FMLA leave at the same time that he was engaged in matters related to his personal business. He admits that after he left work, he dropped**

off some equipment before going on to his medical appointment. Unfortunately the record is devoid of information about the location of Claimant's work in relation to his medical appointment, his laundromat, the truck stop where he picked up another worker, or the property where he dropped off his equipment. Thus we do not know if these locations were near to each other and/or on the way to each other. Claimant was not asked why he dropped off the equipment rather than going directly from his work to his appointment. He was not asked why he did not return to work after his appointment. Nor did the Carrier supply information about the requirements of the FMLA in terms of returning to work immediately after a medical appointment. We note that his medical excuse said he could return to work the following day, November 30, which he did. While the Carrier disputes the validity of the medical note, it never requested that Claimant supply any note at all and did not make any effort to verify the note once it had been produced at the hearing.

Based on a review of the entire record, we conclude that the Carrier has not proved that Claimant was engaged in his personal business the entire 7.5 hours after he clocked out FMLA, but has proved that he was engaged in his personal business for at least 45 minutes, a period greater than his 30-minute lunch period. While a greater abuse of FMLA on that day is possible, it has not been proved. We find that serious discipline is warranted, but that dismissal is excessive for a 15-year employee with a clean disciplinary record. A 30-day suspension is justified. Claimant is to be reinstated, with back pay minus 30 days' pay and any interim earnings.

### AWARD

Claim sustained in part.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the day the Award is transmitted to the parties.

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**Barbara C. Deinhardt**  
**Neutral Member and Chairman**



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**Eric Caruth**  
**Carrier Member**



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**Casey J. Summers**  
**Employee Member**

**Dated:** December 19, 2025