

PUBLIC LAW BOARD NO. 7163

**Award No. 641
Case No. 641**

**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. J. Botting, by letter dated August 21, 2023, in connection with allegations that he violated CSX Operating Rules 712.17 and 712.36 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (Carrier’s File 23-57359 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant J. Botting shall now ‘*** be fully exonerated of all charges brought against him, and that he be made whole from all lost compensation including back pay, bonuses, straight time, overtime, double time and all credits and benefits.’ (Employes’ 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 2005. He had no active discipline on his record.

The facts are undisputed. On February 20, 2022, Claimant was serving as pilot on a rail grinder operated by a non-CSX employee. That employee was exceeding the

speed limit and caused a collision. There is no evidence that Claimant took any action to get the employee to slow down prior to the collision. On March 15, 2022, he was issued a Notice of Investigation in connection with his alleged failure on March 7, 2023 [sic], while piloting the Loram Rail Grinder, to operate within one-half the range of vision, which resulted in a collision.

The Carrier argues that the Investigation established that Claimant's sole duty as pilot was to ensure the Loram employee was in compliance with all CSX operating rules, and that if not in compliance, he had a duty to take necessary action to correct. Claimant did nothing. From the information contained in the record, it appears Claimant did not have situational awareness and made no attempt to ensure the safe operation of the rail grinder. What Claimant actually was doing is not clear in the record, but it is very clear he failed to perform his duties and was not paying attention to the scenario unfolding in front of the equipment. Claimant admitted he did not supervise the Loram employee to ensure he was in compliance with the rules. Dismissal is warranted.

The Organization argues that Claimant was not given a fair and impartial hearing. The Organization challenges the fact that the Carrier failed to produce any employee from Loram to testify. Also, even though Claimant was never charged with violating Rule 712.36, he was dismissed in part for violating Rule 712.36. Further the Carrier has not met its burden of proof. The record is clear that Claimant was not the one operating the rail grinder at the time of the accident. He also testified that he had not been trained on his duties as a pilot or as to how to operate the emergency brake on the rail grinder.

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. As the pilot, Claimant was required to ensure that the Loram employee was operating safely, in this case, at a speed that permits stopping within one half the range of vision. Even if he was not specifically charged with violation of CSX Operating Rule 712.36, the Rule was put into the record and the evidence establishes that Claimant violated the Rule, which reads in relevant part:

A qualified CSX employee must directly supervise and instruct any non-CSX person operating equipment on CSX track. The CSX employee is responsible for

establishing on-track safety, obtaining required authorities and complying with all rules.

However, under all the circumstances here, including Claimant's length of service and the fact that he was not operating the equipment that was violating the speed restrictions, we find that Claimant should be reinstated, but without back pay.

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.



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



Eric Caruth



**Casey J. Summers
Employee Member**

Carrier Member