

PUBLIC LAW BOARD NO. 7163

Award No. 644

Case No. 644

**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. Ashley, by letter dated December 4, 2023, in connection with allegations that he violated CSX Operating Rules 104.1, 105.1(1 and 4), 712.17 and the CSX Code of Ethics was arbitrary, capricious, unnecessary and excessive (System File DRA 301623/23-84473 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 Mr. Ashley personnel record, immediately return Mr. Ashley 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, investment, banking, mortgage/rent, back pay checks from SPG, recognition bonuses or other financial loss suffered, to include railroad retirement accrument (service months and contributions lost) because of the improper discipline.’ (Employee’ 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 2011. He had an active dismissal warning waiver and an active formal notification on his record at the time of the incident.

On October 25, 2023, he was issued a Notice of Investigation in connection with his alleged failure to properly control speed and movement of his on-track equipment when he failed to operate at a speed that allows him to stop within one-half the range of vision, resulting in a collision, and his alleged failure to report the incident as required.

The Carrier argues that the Investigation established that on October 23, 2023, Claimant was operating his equipment and failed to control his speed, resulting in a collision. He did not report the incident. He told his supervisor that he had applied the brakes, but that the “ballast regulator machine did not stop.” The supervisor tested the brakes and found no defects. The supervisor also asked Claimant why he had not reported the incident and he replied that he had been in a lot of trouble with the Carrier and hoped that if he didn’t report it, he wouldn’t lose his job. Dismissal is warranted.

The Organization argues that the Carrier has not met its burden of proof. Claimant was not given a fair and impartial investigation. He received the Notice of Investigation the evening before he was scheduled to appear. Furthermore, Carrier violated Rule 25(1)(c) when it failed to give Claimant and the Organization a copy of Claimant’s statement.

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. On the issue of the Notice of Investigation, we find that the Notice was mailed in a timely manner, that it was delivered to Claimant’s home in advance of the hearing, and that Claimant knew of the Investigation through his Organization representative. He indicated that he was prepared to go forward with the hearing. While it would be a better practice to mail a Notice such that it can be delivered in time to give

a claimant more notice, we find that in this instance Claimant was not prejudiced. As to the argument that Carrier violated Rule 25(1)(c) by not giving Claimant a copy of his statement, we find that the Agreement does not state that the written statement has to be provided at the time it is given. He did not request a copy of the statement at the time he gave it and a copy was provided at the hearing. On the merits, we find that the Carrier has met its burden of proof. The supervisor tested the brakes and found no defect. On the charge of not reporting the incident, Claimant admitted he did not report it and explained that he had hoped it would go unnoticed since he had been in a lot of trouble and didn't want to lose his job. Particularly in light of Claimant's disciplinary history, dismissal is warranted.

AWARD


Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant not be made.



Barbara C. Deinhardt
Neutral Member and Chairman



Eric Caruth



Casey J. Summers
Employee Member

Carrier Member