

PUBLIC LAW BOARD NO. 7163

Award No. 650

Case No. 650

**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. G. Davis, by letter dated December 19, 2023, in connection with allegations that he violated CSX Operating Rules 103.2, 103.3, 104.4 and the CSX Code of Ethics was arbitrary, capricious, unnecessary and excessive (System File DRA707923/24-58639 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 pay 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, none of which are to be reduced by outside earnings gained by the Claimant while not compensated by the Carrier during the discipline period.’ (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 on his record at the time of the incident.

By letter dated October 26, 2023, the Carrier directed the Claimant to report for a formal investigation into allegations that Claimant displayed conduct unbecoming of a CSX employee when he engaged in the unauthorized possession, removal, or disposal of material from CSX property or from the property of customers on October 20, 2023, at or near Manchester, Tennessee and all circumstances relating thereto.

The Carrier argues that the Investigation established that Claimant and another employee engaged in a scheme to remove CSX rail ties and sell them to a local landscape Company and that Claimant also removed ties to his residential property for his own use. Testimony and evidence introduced in the record, including Claimant's written statement, established that he had no authority or permission to remove the ties from CSX property or to have them in his personal possession. Testimony from Special Agent Thompson established he had conducted an investigation to determine Claimant, and another CSX employee, had utilized both a company grapple truck and his own personal vehicle to deliver these ties to the landscape company on a number of occasions. When given the opportunity to testify, Claimant acknowledged he did not have permission to sell the ties and that he was in violation of the rules when he engaged in this conduct. Dismissal is warranted.

The Organization argues that the discipline is excessive. Claimant has a clean record and many years of service. He was under particular stress due to family and financial issues. He took responsibility and apologized for his actions. The Organization asks for leniency in this case.

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 facts are undisputed that Claimant took property that did not belong to him and sold it for personal gain. However, under all the circumstances, including Claimant's length of service, clean record, and admission of responsibility, we find that he should be reinstated but with a time served suspension and no 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

Carrier Member



Casey J. Summers
Employee Member