

**PUBLIC LAW BOARD NO. 7529
CASE NO. 104
AWARD NO. 104**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization File: D21002715))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier File: 2015-191288)		

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. *The Carrier’s dismissal of Claimant A. Thomas for the alleged violation of CSXT Operating Rules 100.1, 104.2 and 104.4, as well as the CSX Code of Ethics was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D21002715/2015-191288 CSX).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant A. Thomas shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”*

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 15, 2012, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication.

After a thorough review of the record, and a hearing on this matter held on August 25, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question in this claim.

The Claimant had over 15 years of seniority at the time of the incident. By letter dated July 29, 2014 the Carrier directed the Claimant to report for a formal investigation into allegations that he used a Carrier credit card to purchase fuel for personal use on various dates between April and July 2014.

Following a mutually agreed to postponement, on June 25, 2015, the Carrier convened the formal investigation and carried it through to conclusion. By letter dated July 10, 2015, the Carrier informed the Claimant that he had been found guilty of violating CSXT Operating Rules 100.1, 104.2 and 104.4, as well as the CSX Code of Ethics and assessed an immediate dismissal.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization contends that the Carrier failed to comply with Rule 25 of the CBA. They say that the Carrier failed to meet its burden of proof and that the discipline assessed was excessive.

POSITION OF THE CARRIER:

The Carrier says that the Notice of Investigation was sufficient.

The Carrier says that in June and July 2014, Claimant was a foreman with the Carrier and had access to a fuel card provided by the Carrier. During that time, Claimant made numerous impermissible and illegal fuel purchases where he would meet others at a gas station and authorize purchases for third party vehicles in exchange for payment. Essentially, Claimant was using the Carrier fuel card to purchase and then sell fuel. As a result of that activity, CSX Police became involved and Claimant was arrested and charged with 21 counts of credit card fraud. On September 22, 2014, Claimant pled guilty to grand theft in Circuit Court and was sentenced to, among other things, no contact with CSX property and restitution for the fraudulent charges.

By letter dated July 29, 2014, the Claimant was charged with fraudulent fuel card practices and directed to attend an investigation. Exhibits were presented detailing Claimant's activity and the transactions involving his fuel card. The Claimant testified at hearing and admitted to all allegations. The Claimant further admitted that he pled guilty and was sentenced in criminal court. After a review of the evidence and testimony presented during the hearing, by letter dated July 10, 2015, the Claimant was dismissed for violating CSXT Operating Rule 100.1, 104.2, 104.4, and the CSX Ethics Policy.

RESULT:


With respect to the Notice of Investigation, this Board finds that it was sufficient. The Claimant was given enough information to know the case to be met. That is all that is required in such cases, absent a specific CBA provision to the contrary. The parties did not point the Board to any such CBA provision. Thus, this Board dismisses the preliminary procedural objections raised by the Organization.

Turning to the merits of the case, the Board finds that there is sufficient evidence for the Carrier to have met its burden of proof, based on the admissions of the Claimant.

The Board finds no reason to interfere with the quantum of discipline assessed in these circumstances.

AWARD:

The claim is denied.



Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL