PUBLIC LAW BOARD NO. 7529
CASE NO. 108
AWARD NO. 108

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION – IBT RAIL CONFERENCE	)	
(Organization File: D70183415)	)	**PARTIES TO THE DISPUTE**
vs.	)	
CSX TRANSPORTATION, INC.	)	
(Carrier File: 2015-194266)	)	

STATEMENT OF CLAIM:
"It is my desire to appeal the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Public Law Board No. 7529. I understand that the Neutral Member of Public Law Board No. 7529 will base his/her decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and the discipline rule of the Maintenance of Way 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 September 26, 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 Carrier hired contract Maintenance of Way ("MOW") Foreman A. Brown ("Claimant") on November 11, 1996. On July 20, 2015, Chad Coker, Roadmaster, contacted Robert Brown, Roadmaster, and reported that on the previous day, Sunday, July 19, 2015, Claimant had advised Mr. Coker that he was going to church in the morning, but that he would report to work after church to complete a "heat run," which is a track inspection that must be performed any time the temperature is 85 degrees or above. Jeff Chafin, Assistant Division Engineer, later checked the heat runs, and discovered that Claimant had never reported to work or completed the required heat run on July 19, 2015. Roadmaster Brown later asked Claimant whether he ran heat on July 19, and Claimant said that he did. However, when Roadmaster Brown asked to see Claimant's EC-1 book, in which the heat run would have been documented, Claimant changed his statement and admitted that he did not come to work and had not completed the heat run on July 19.

Claimant memorialized this admission in a written statement. As a result, Roadmaster Brown audited Claimant's heat inspection records for June and July 2015, and discovered a pattern of failure to perform/document track inspections.

At the investigative hearing on August 18, 2015, the Carrier says that testimony revealed that the Claimant failed to complete his heat run duties on several occasions throughout June and July 2015, in violation of CSXT Operating Rules and FRA record-keeping requirements. After a review of the evidence and testimony, the Carrier determined the Claimant violated CSX Operating Rules 100.1, 104.2, 104.6, 104.7, 704.1, the CSX Attendance Policy, FRA Rules CFR 213.118 and 213.241, and MWI 2006-01. By letter dated September 4, 2015, the Claimant was dismissed from service.

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 by not having specific Rule numbers in the Notice of Investigation. They also say that the Carrier was out of time on the charges since the events were alleged to have occurred in June and July, yet the Notice of Investigation did not issue until August 5, 2015. This must be done, they say, within 20 days under the terms of the CBA.

In addition, they say that Rule 25(c) was violated. This Rule requires that an employee has the right to consult with a union representative prior to reducing a statement to writing.

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. They say, with respect to the time period, that the Notice was issued within 20 days of discovery of the issue. With respect to Rule 25(c), they point to their form, given to the Claimant in advance of his making a written record, which advises him of his rights. Specifically, it says:

"Any employee shall be offered the opportunity to contact his accredited union representative before a statement is reduced in writing. A copy of his statement, if reduced in writing and signed by him, shall be furnished him and his union representative."

With respect to the infractions, they pointed this tribunal to the admission in the record. Thus, they say, their burden of proof has been met.

With respect to the quantum of discipline, they say that dismissal is appropriate given the breach of trust of the Claimant.

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.

Turning to the timeliness of the Notice, the Board accepts that, while the actions of the Claimant occurred in June through July, they were not discovered by the Carrier until late July. The Notice was issued in early August. This is in compliance with the 20 day requirement under the CBA.

With respect to the notice concerning union representation, this Board accepts that the language at the top of the form fulfills the Carrier's obligation with respect to Rule 25(c).

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 and the evidence in the transcript.

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