PUBLIC LAW BOARD NO. 7529
CASE NO. 110
AWARD NO. 110

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION – IBT RAIL CONFERENCE	)	
(Organization File: D13910015)	)	**PARTIES TO THE DISPUTE**
vs.	)	
CSX TRANSPORTATION, INC.	)	
(Carrier File: 2015-194275)	)	

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 Foreman R. Bray ("Claimant") on June 27, 2005. Assistant Division Engineer Jeremiah Davis testified the Atlanta Division Engineering department conducted a comprehensive review of track inspections on July 27, 2015 and identified discrepancies with the Claimant's FRA inspection reports. In particular, Mr. Davis testified the review indicated the Claimant didn't conduct certain track inspections on Saturdays, but he claimed pay for in the months of April 2015 through July 2015. Mr. Davis submitted copies of the inspection reports and testified the Claimant claimed time/pay for the inspections, but didn't receive any EC-1 authority to occupy the track. Additionally, after the Organization questioned him about conducting the inspections under a rule not requiring EC-1 authority, Mr. Davis testified it would be nearly impossible for the Claimant to conduct the inspections under Rule 705 because of the distance he would've been required to walk. The Claimant provided a statement to Mr. Skinner stating he, in fact, worked on the Saturdays listed above, but put the inspections

in the next day because he had computer problems. Finally, the Claimant admitted at the investigative hearing he didn't conduct the track inspections on the dates of the reports submitted at the investigative hearing in violation of FRA regulations and Carrier Operating Rules.

After a review of the evidence and testimony presented during the hearing, the Carrier determined the Claimant violated Operating Rules 100.1, 104.2, and CFR 213.241. By letter dated September 15, 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 violated the CBA when it recessed the investigation for a day to gather rebuttal witnesses. Further they say that Rules 100.1 and 104.2 were not introduced in the hearing, yet they appeared in the dismissal letter, thus violating the Claimant's right to a fair and impartial investigation.

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 recess, they say that there is nothing in the CBA which prevents this. They also say that, if the shoe were on the other foot, the Organization would complain about not being granted an appropriate recess. With respect to Rules 100.1 and 104.2, they say that the admission on the merits overcomes this procedural defect.

With respect to the infractions, they pointed this tribunal to the admissions 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.

With respect to the recess, the Board finds for the Carrier. There is nothing in the CBA which prevents it and it was reasonable in the circumstances.

With respect to Rules 100.1 and 104.2, the Board cannot agree with the Carrier. Admissions on

the merits never overcome procedural defects, as explained in more detail in earlier cases before this Board. Thus, this Board finds for the Organization with respect to any violations of these 2 Rules – they are out. However, there are other violations alleged.

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, for a finding of guilt on the infraction of CFR 213.241.

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