

**PUBLIC LAW BOARD NO. 7529  
CASE NO. 111  
AWARD NO. 111**

<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>	)	
<b>EMPLOYES DIVISION – IBT RAIL CONFERENCE</b>	)	<b>PARTIES TO THE</b>
<b>(Organization File: D70813915)</b>	)	<b>DISPUTE</b>
	)	
<b>vs.</b>	)	
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	
<b>(Carrier File: 2015-195694)</b>	)	

**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 Track Foreman F. Moss (“Claimant”) on October 2, 2006. Assistant Division Engineer Zack Nichols testified he received an email on July 21, 2015 from the Carrier’s Audit Department raising concerns with the Claimant’s fuel card purchases. Mr. Nichols conducted an investigation with Road Master Robert Lester and determined the Claimant purchased unauthorized items using his Carrier-issued fuel card between January 2015 and July 2015. Messrs. Nichols and Lester confronted the Claimant about the purchases and he admitted to purchasing the unauthorized items. On July 22, 2015, after notifying the Claimant he had the right to contact his union, he provided a statement admitting he purchased unauthorized items. Additionally, the Claimant admitted to purchasing unauthorized items in violation of the applicable Carrier policies and Operating Rules.

After a review of the evidence and testimony presented during the hearing, it was determined the Claimant violated CSX Operating Rules 100.1, 104.2, the Ari-Wright Express Fuel Card Agreement, and the CSX Code of Ethics. By letter dated September 9, 2015 Claimant was assessed a 60 calendar day actual suspension for this incident and required to attend additional ethics and fuel card training upon his return to work.

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 say that the Carrier failed to meet its burden of proof and that the discipline assessed was excessive, especially since, once shown the Rules, he understood them and said he would abide by them.

**POSITION OF THE CARRIER:**

The Carrier says that the Notice of Investigation was sufficient.

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 could have been appropriate given the breach of trust of the Claimant, but that they opted, instead, for a 60 day suspension.

**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 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, especially as the Carrier only gave the Claimant 60 days rather than an outright dismissal.

**AWARD:**

The claim is denied.



**Roger K. MacDougall**  
**Chair and Neutral Member**

Dated: 2/17/2017

At: Chicago, IL