

Public Law Board No. 7529

Brotherhood of Maintenance
Of Way Employees

VS.

CSX Transportation, Inc.

PARTIES TO DISPUTE

Statement of Claim:

“Claim of the System Committee of the Brotherhood that:

1. *Carrier’s imposition of discipline in the form of a ten (10) calendar day suspension upon Mr. K. Herndon for the alleged violation of CSXT Operating Rules – General Rule A, CSX Code of Ethics Policy and CSX Safeway Rule GS-28 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D70823213/2013-151788).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant K. Herndon shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”*

It is my desire to process the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Special Board of Adjustment No. 7529. In so electing, I understand that the Neutral Member of Special Board of Adjustment 7529 will base his decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and Rule 25 of the Maintenance of Way Agreement.

Findings and Decision:

The Public Law Board 7528, based on the entire record, finds that the parties are carrier and employee within the meaning of the Railway Labor Act, as amended, that this Board has jurisdiction over the dispute, and the parties were given due and proper notice of the hearing.

It was charged that while on duty between May 16 and June 11, 2013, K.R. Herndon, Engineer, ID No.

212718 (Claimant), was in possession of and/or used personal electronic devices without permission of any CSX manager for non-business purposes. After testimony and evidence were presented, it was determined Claimant violated CSX Transportation Operating Rules- General Rule A, Safeway Rule GS-28 and the CSX Code of Ethics Policy.

Claimant, a machine operator told Schneider that he had recorded conversations between himself and another employee. Then Claimant showed Schneider the phone by pulling it out his pocket. Schneider saw that the phone was in record mode. Claimant further stated that he records conversations for many hours while at work. Claimant also told Manager Elandt he had been recording conversations of fellow employees.

The Carrier presented substantial evidence proving Claimant violated the work rules. Claimant violated CSX Transportation Operating Rule A which requires employees to know and obey the rules. Claimant also violated Safeway Rule GS-28 which prohibits the use of personal electronic devices for uses other than voice communication while on duty. In addition, Claimant was charged with violating CSX Code of Ethics Policy which requires that employees observe safety rules and procedures when operating machinery and equipment. This latter violation is deemed not proven since there were no facts to support the assertion.

The Hearing Officer found the testimony of Elandt and Schneider was credible stating that Claimant had been recording a fellow employee statement with his cell phone. Claimant at one point in his testimony denied that he recorded his fellow employees. Claimant at another point in his testimony admitted to using his phone as a recording device. Nonetheless, a review of the record indicates the Hearing Officer's decision should be upheld. It is determined the Carrier has presented substantial evidence and met its burden of proof in this case and shown Claimant violated Rules A and GS-28.

The Claimant asserts that Rule GS-28 was not uniformly enforced, therefore Claimant should not be subject to discipline. Claimant's testified that a CSX official had texted him and he texted him back. However, even assuming this statement is true does not provide a defense for Claimant. The facts prove Claimant was "recording" conversations which had no legitimate connection to performing his work and serving his employer. This was shown by the testimony when Claimant unilaterally recorded conversations when talking with other Carrier employees.

The Claimant's ten days suspension was appropriate and reasonable. This conclusion is reasonable even considering that one of the rule violations was not proven. Claimant violated Rule A and GS-28 which were serious violations. Therefore, the discipline assessed in this case was justified.

Award:

The claim and appeal is denied, in accordance with the Findings and Decision. The Carrier is direct to honor the Award effective upon it being signed.

9-15-14

Award Date

Lamont M Walton

Lamont M. Walton, Referee