

**PUBLIC LAW BOARD NO. 7529**

**Brotherhood of Maintenance of Way** )  
**Employees Division - IBT Rail** )  
**Conference** )  
 )  
**and** )  
 )  
 )  
**CSX Transportation, Inc.** )

**Case No. 77**  
**Award No. 77**

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline of Claimant W. Royston for the alleged violation of CSXT Operating Rules 100.1, 104.1, 104.4 and 104.7 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D72900115/2015-180700 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Royston shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On October 15, 2014, Assistant Division Engineer Ramsey issued a notice of investigation to Claimant stating:

The purpose of this formal investigation [on October 30, 2014] is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1445 hours, on October 9, 2014, at or near mile post SG 507.3, in the vicinity of Fowler Yard. You didn't receive permission to leave work before your designated off-duty time; when questioned you concealed facts under investigation.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 104.1, 104.4, and 104.7.

Following mutually agreed to postponements by the Carrier and Organization, the investigative hearing convened on November 26, 2014, wherein Claimant and his representative were afforded the opportunity to present witnesses and documents pertinent to the matter under investigation and an opportunity to examine Carrier witnesses and documents.

On December 16, 2014, Division Engineer Murray notified Claimant that, based on the witness testimony and documents pertinent to the matter under investigation, Claimant violated the rules as charged. Specifically, the Division Engineer determined that Claimant violated Rule 100.1 (did not contact a supervisor for clarification on the safest course), Rule 104.1 (did not perform duties in a safe

and efficient manner that prevents unnecessary delay to customers or devote himself exclusively to CSX during the workday), Rule 104.4 (do not conceal facts under investigation or endanger CSX' customers or the public) and Rule 104.7 (must have supervisor permission to leave work prior to off-duty time). Based on these rules infractions, the Division Engineer assessed Claimant a thirty (30) day actual suspension and fifteen (15) days overhead or deferred suspension.

On January 5, 2015, the Organization notified the Carrier that Claimant, after discussing this matter with a representative of the Organization, elected to proceed with a review of the imposed discipline by submitting this claim for "expedited handling as provided for in Appendix 'N' Expedited Discipline Agreement of the June 1, 1999 BMW/CSXT Agreement."

### Findings

Public Law Board No. 7529, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant agreed to "expedited handling" of this claim. In doing so, he acknowledged that the decision of the Neutral Member of this Board is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement. With respect to Rule 25, the Organization asserts that the Carrier failed to afford Claimant a fair and impartial hearing in violation of the Rule. A review of the record convinces the Board that the Carrier afforded Claimant a fair and impartial hearing as required by Rule 25.

As for the discipline assessed to Claimant, Third Division Award 37357 involving the Carrier and Organization captures the Board's function in this matter.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of its discretion. See Second Division Award 7325 and Third Division Award 16166.

Claimant has approximately eight (8) years of service with CSX. On the incident date of October 9, 2014, he was the Foreman for 5AAT, an extra gang installing switch ties. Claimant is aware of the rules as they are reviewed with him annually. The record contains substantial evidence that Claimant violated Rules 100.1, 104.1, 104.4 and 104.7. Comprising substantial evidence is the testimony from Assistant Division Engineer Ramsey and Claimant's testimony. In this regard, Claimant acknowledged that he transported two (2) gang members to the hotel approximately three (3) hours prior to the end of the workday. Claimant acknowledged he did not have authority to release the 2 gang members from the worksite prior to off-duty time. With respect to the backhoe, the Board finds Claimant's testimony was unpersuasive about the circumstances for another gang member transporting the backhoe to Atlanta for

repairs or scheduled maintenance. This resulted in the cessation of tie installation in the middle of the workday which is contrary to the practice to arrange for delivery of a backhoe to the worksite so that tie installation continues. Finally, Claimant's assertion that he was taking the safest course by allocating two and a half (2.5) hours to travel five (5) miles to the depot to secure plates, when there were plates at the worksite, tends to diminish the value of his testimony on other pertinent matters.

Given the proven rules violations, the 30-day actual suspension and the 15-day overhead (deferred) suspension are not exposed as arbitrary or excessive. The Board finds no violation of the Agreement and denies the claim.

Award

Claim denied.



Patrick J. Halter  
Neutral Member

Dated on this 14<sup>th</sup> day of  
March, 2016