

**PUBLIC LAW BOARD NO. 7529  
CASE NO. 84  
AWARD NO. 84**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION – IBT RAIL CONFERENCE  
(Organization file: D21002115 CSX)**

**vs.**

**CSX TRANSPORTATION, INC.  
(Carrier file: 2015-183543)**

**PARTIES TO THE  
DISPUTE**

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. *The Carrier’s dismissal of Claimant L. Cahoon for the alleged violation of CSX Drug/Alcohol use Policy and CSXT Operating Rules - General Rule G and General Rule A was on the basis of unproven charges, arbitrary, and in violation of the Agreement (System File D21002115/2015-183543 CSX).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant L. Cahoon shall receive the remedy prescribed in Rule 25, Section 4 of the 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 25, 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 July 19, 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 facts in this case are not in dispute. The Claimant has established and maintained seniority in the Carrier’s Maintenance of Way Department. On February 3, 2011, the Claimant tested a .069 on a breath alcohol test while on duty resulting in a General Rule G violation. As a result, the Claimant signed a “Bypass” agreement where he agreed to remain abstinent from alcohol and other substance related intoxicants for five years. In return, the Carrier agreed to hold the violation in abeyance unless the Claimant violated the “Bypass” agreement, resulting in a reinstatement of the prior charge in addition to the incident causing the violation. The parties

made this agreement, which is not disputed, but merely recited as background to the current dispute.

The Claimant was informed, by letter dated November 9, 2011, that he failed a Short Notice Follow-Up breath alcohol test on October 25, 2011 while on duty. At this time, the Claimant had tested .087 on a breath alcohol test, which violated the "Bypass" agreement resulting in a General Rule A and G violation. A formal investigation was held on February 8, 2012 following several mutual postponements by the Claimant and the Carrier. Although the Claimant did not appear at the investigation, the Carrier carried out the investigation through to a conclusion. The Organization was present at the investigation. The Claimant was informed that he was found guilty of all charges by letter dated February 28, 2012, resulting in his dismissal. On March 3, 2015, the Organization informed the Carrier of Claimant's intent to seek expedited adjudication with this Board.

#### **POSITION OF THE ORGANIZATION:**

The Organization's position is that the Carrier has failed to comply with the procedural protections of Rule 25, by not providing the Claimant with a fair and impartial hearing. The Organization also submits that even if the Claimant was afforded a fair and impartial hearing, the Carrier has failed to meet its burden of proof and the discipline imposed was arbitrary, unwarranted and a violation of the Agreement. They assert that discipline is to be progressive rather than punitive in nature. In support they state that this Board and the NRAB have consistently held that when a claimant is disciplined for multiple violations but the Carrier failed to carry its burden on all of the charges, the discipline should be reduced.

#### **POSITION OF THE CARRIER:**

The Carrier's position is that the Organization's appeal to this Board is untimely based on its submission three years after the discipline was assessed. This is in violation of Rule 25, stating that an appeal must be brought within fifteen days of the notice of the discipline. Therefore, this case should be denied on this basis alone. In support they state that the contractual guidelines within the Agreement are to ensure the prompt settlement of grievance and to provide an additional element of order to the grievance procedure and this Board is bound to apply and enforce these contractual provisions as written. The Carrier further asserts that the Claimant was afforded a fair and impartial hearing based on Rule 25. The Claimant was aware of the date and location of the hearing and has the right to attend or not attend his hearing. The Organization failed to provide any justification for the Claimant's absence and it was reasonable for the Carrier to proceed with the hearing in the Claimant's absence. In addition, the Carrier claims to have met its burden of establishing the Claimant violated CSX Transportation, Inc. Safeway Rule G and A when he tested positive for alcohol on both February 3, and October 24, 2011. Even further, the discipline assessed was not arbitrary. The Claimant committed a major offense for which a single infraction can result in a dismissal. The Claimant violated the "Bypass" agreement and his actions cannot be tolerated.

**RESULT:**

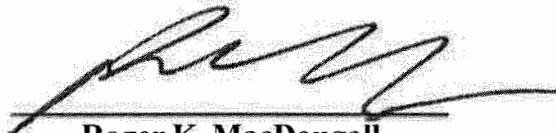
An Arbitration Board is bound in its authority and jurisdiction by the Collective Bargaining Agreement and has no right or ability to alter any such agreement. To do so would be to step outside its authority or jurisdiction.

As stated in Rule 25 of the Collective Bargaining Agreement, Section 3(a) referring to appeals, an "appeal from discipline must be made, in writing, by the employee or on his behalf by his union representative to the carrier's Highest Labor Relations Officer within fifteen (15) days after receipt of written notice of discipline." The record clearly shows that the Claimant's dismissal occurred on February 28, 2012 upon receiving a letter from the Carrier. The Claimant did not seek an appeal until March 3, 2015. This is well beyond the fifteen (15) days allotted within the Collective Bargaining Agreement for the notice of appeal. Therefore, the Claimant's appeal is untimely.

Given the results, the Board need not deal with the merits of the case because of the procedural determination above.

**AWARD:**

The claim is denied.

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

Dated: 2/17/2017

At: Chicago, IL