

**PUBLIC LAW BOARD NO. 7529
CASE NO. 85
AWARD NO. 85**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	
(Organization file: D21002215 CSX))	PARTIES TO THE
)	DISPUTE
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier file: 2015-183716))	

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

1. The Carrier’s dismissal of Claimant L. Butler for the alleged violation of CSX Operating Rules 100.1, 104.1, 104.6, 104.7 and 104.10 was on the basis of unproven charges, arbitrary, and in violation of the Agreement (System File D21002215/2015-18716 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Butler 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 more than thirty-six (36) years of service in the Carrier’s Maintenance of Way Department and has worked in a variety of positions in the Bridge and Building (B&B) Department. The Claimant received a letter dated January 27, 2015 indicating a formal investigation would occur regarding allegations that he failed to report to work at the designated time and place, departed work early and claimed a full day’s pay on several dates in January 2015. Specifically, on January 22, 2015 the Claimant was scheduled to work the hours of 0700 to 1730. On that date, the Claimant arrived at 0906, took an extended lunch break, and left early at 1535. At the time, the Claimant was assigned as a B&B Foreman of Facility Maintenance and classified as a Service Lane Work Territory gang. During the day in question, the Claimant entered a full ten-hour day on his payroll reporting.

The formal investigation indicated that the Claimant's arriving late and leaving early was without knowledge or approval of his supervisor. Upon conclusion of the formal investigation on February 12, 2015, the Claimant was notified, by letter, dated March 2, 2015, that he had been found guilty of violating CSX Transportation, Inc. Operating Rules 100.1, 104.1, 104.6, 104.7 and 104.10. The Claimant was assessed the discipline of immediate dismissal.

The Organization appeals this decision to this Board.

POSITION OF THE ORGANIZATION:

It is the Organization's position that the Claimant was not provided a fair and impartial hearing required by Rule 25 of the Agreement. They claim that during the Claimant's hearing the conducting officer's questions were leading, resulting in a prejudgment of the Claimant's actions. Furthermore, the record makes it clear that Carrier managers and supervisors discussed the Claimant's case in advance and had already made a determination that Claimant was guilty, destroying any semblance of a fair and impartial hearing. The Organization also submits that the Carrier failed to meet its burden of proof and the discipline imposed was arbitrary, unwarranted and a violation of the Agreement. The Claimant states that he did what he believed to be appropriate and acted no different than any other B&B employee during the course of his thirty-six (36) years of working for the Carrier. The Organization believes that the Claimant's thirty-six plus (36) years of service with the Carrier along with the common practices established by the employees that the dismissal of the Claimant is arbitrary and unwarranted.

POSITION OF THE CARRIER:

It is the Carrier's position that the Claimant was provided a fair and impartial hearing in the proper manner provided to him under Rule 25 of the Agreement. The Claimant was provided notice of the charges, provided an opportunity to cross-examine witnesses, present evidence and confer with his representative. It is clear that the Claimant violated Rules 104.1, 104.7 and 104.10 when he arrived to work late, left early, and claimed time for work not performed. The Carrier states that the Claimant used confusing and circular excuses in an attempt to explain or justify his dishonest actions and he continually took advantage of his freedom as a foreman on floating assignments to steal time by making personal trips. It is their position that the discipline assessed is in accordance with their long standing policies. The infractions committed by the Claimant can result in dismissal upon the first transaction. This, along with the Claimant's four prior disciplinary actions on his record, makes the discipline assessed neither harsh nor excessive by the Carrier.

RESULT:

As this is a discipline case, the Carrier, has the burden of proof concerning this claim.

As to the procedural issue at hand, a hearing officer is not held to the same standard as an arbitrator or a judge. Although a few leading questions were asked by the hearing officer and the hearing officer and charging officer did briefly discuss the case prior to the hearing, these actions are not fatal in the railroad industry. The hearing process in the railroad industry is unlike any other and because of its unique features it is not uncommon for the charging officer and hearing

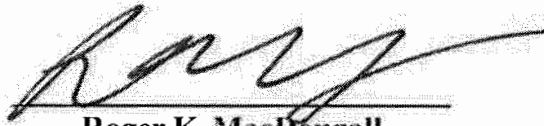
officer to do this. Overall, while the handling of the investigative hearing may not have been perfect, it does not rise to the level of procedural failure warranting dismissal of the case.

With respect to the merits, the Carrier has met its burden of proof. They have shown, through extensive evidence on the record, including GPS records, that the Claimant did fail to attend work many times when he said (on his time sheets) that he was working. Ultimately, even the testimony of the Claimant indicates this. Thus, the Claimant violated the Rules in question.

Turning to the quantum of discipline, the Organization bears the burden of proof that the discipline assessed by the Carrier is arbitrary, excessive and in violation of the Agreement. It is clear that the Claimant did arrive and leave work early without notifying his supervisor, along with spending extra time eating, however, the evidence before the board shows that this is not an uncommon practice. As a result, the Board finds that the Claimant did violate company policy but his actions are mitigated by the evidence of common practice. The Carrier met its burden of proof but with respect to the discipline the Board will return the Claimant to work but with timeout of service to count towards the penalty.

AWARD:

The claim is sustained in part. The Claimant shall be returned to service without compensation for time out of service.


Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL