

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization file: D21002315 CSX))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier file: 2011-084797))	

1. The Carrier's dismissal of Claimant E. Shannon for the alleged violation of CSXT Operating Rules, General Regulation GR-1 and Rule 26 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D21002315/2011-084797 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Shannon shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."."

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.

The facts in this case are not in dispute. The Claimant has established and maintained approximately ten (10) years of service in the Carrier's Maintenance of Way Department. By letter dated October 15, 2010 the Claimant was informed of a formal investigation that would occur based on allegations that he failed to protect his assignment and had been absent without permission since September 13, 2010.

Page 1

December 10, 2010 stating that the Claimant had been found guilty for violating CSX Operating Rules, General Regulations GR-1 and Rule 26 of the Agreement. The discipline assessed was an immediate dismissal. By letter received on March 25, 2015, the Organization notified the Carrier that it intended to appeal the discipline assessed through the expedited process.

POSITION OF THE ORGANIZATION:

It is the Organization's position that the Carrier failed to provide the Claimant with a fair and impartial hearing required by Rule 25 of the Agreement. The Carrier conducted the hearing in the absence of the Claimant and therefore deprived the Claimant of the ability to present, listen to testimony, provide evidence or otherwise establish a defense. Further, the Claimant states that the Carrier also failed to meet its burden of proof and the discipline imposed was arbitrary, unwarranted and a violation of the Agreement. The Claimant believes he was in full compliance with the rules when his wife contacted his manager, alerting him of the Claimant's situation and establishing that he would be unable to report for service. The discipline assessed was arbitrary and unwarranted based on the Claimant's ten (10) years of service with the Carrier, along with the fact that the Claimant was experiencing personal issues during the time of his absence. The Organization believes that the Carrier improperly applied Rule 26 when terminating the Claimant for being absent more than fourteen (14) consecutive days, but rather Rule 25 is proper by providing a fair and impartial hearing to the Claimant rather than an immediate dismissal.

POSITION OF THE CARRIER:

It is the Carrier's position that the Organization's appeal is improper based on its submission more than three years after the discipline was assessed. Three years is well beyond the time limit for an appeal and therefore the appeal is untimely. It is their belief that the contractual guidelines for the filing and processing of claims are not intended as traps for the unwary but rather serve to ensure the prompt settlement of grievances and to provide an additional element of order to the grievance procedure. Although the Claimant was unable to attend the hearing, he was given proper notice of the charges, sufficient time to prepare a defense, the opportunity to produce and examine evidence, and the opportunity to present and cross-examine witnesses. The fact that the Claimant could not attend due to his incarceration does not deter from the ability of the Carrier to proceed with its investigation without the presence of the charged employee. The Claimant was in clear violation of Rule 26 when he was absent from duty without permission for over two months and he failed to contact his supervisor to notify him of his absence. He was also unable to show that he was absent due to sickness, disability, or a circumstance beyond his control. The Carrier has the right to expect its employees to regularly attend work and protect their assignment and therefore the discipline assessed was proper.

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 December 10, 2010 upon receiving a letter from the Carrier. The Claimant did not seek and appeal until March 25, 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