

**PUBLIC LAW BOARD NO. 7529
CASE NO. 91
AWARD NO. 91**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	
(Organization file: D70808115))	PARTIES TO THE
)	DISPUTE
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier file: 2015-187322))	

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

1. *The Carrier's dismissal of Claimant T. Hackler for the alleged violation of CSXT Operating Rules 100.1, 104.2, 104.3 and 104.10 as well as the CSX Code of Ethics was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D70808115/2015-187322 CSX).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant T. Hackler 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 15, 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 August 25, 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 approximately nine (9) years of service in the Carrier's Maintenance of Way Department. At the time of the incident the Claimant was a floating machine operator. Nine times, starting in January 2015, Claimant left his assignment early to attend a court mandated pre-trial intervention program. On each of those days, Claimant entered a full day for payroll and claimed overtime on several occasions. At the time, the Claimant was allowed to leave assignment early without dock of pay because he would be under the care of the Carrier's program. On a later date, the Claimant was found to have never enrolled in the program and admitted that he left early on the dates in question and claimed a full day's pay. On March 13, 2015, Claimant was charged with dishonesty related rule violations

including 100.1, 104.2, 104.3, 104.10 and the CSX Code of Ethics. The Claimant was dismissed for these violations by letter dated April 22, 2015.

The Claimant elected to handle the matter via an expedited process as permitted under the Agreement.

POSITION OF THE ORGANIZATION:

The Organization's position is that the Carrier has failed to provide a fair and impartial hearing required by Rule 25 and has failed to meet its burden of proof in its determination that the Claimant has violated CSX Operating Rules 100.1, 104.2, 104.3 and 104.10 as well as the CSX Code of Ethics. Even if the Carrier has met its burden of proof, the Organization claims that the discipline imposed was arbitrary, unwarranted and in violation of the Agreement. The Organization argues that the Carrier has failed to produce substantial and sufficient evidence to establish that the Claimant was in violation of the Carrier's rules. Even if the Carrier had provided the Claimant a fair and impartial investigation and met its burden of proof, the discipline imposed by the Carrier was arbitrary and unwarranted. It is a widely held notion that the discipline imposed is to be progressive rather than punitive in nature.

POSITION OF THE CARRIER:

The Carrier's position is that the Claimant was granted a fair and impartial hearing where he was represented by the Organization, received proper notice of the charge, provided notice of the charges, an opportunity to cross-examine witnesses and to present evidence and confer with his representative. The Carrier states they have met their burden in determining that the Claimant violated CSX Operating Rules 100.1, 104.2, 104.3, 104.10 and the CSX Code of Ethics. In support they assert that the Claimant admitted that he left work early and improperly claimed time when he left early, therefore violating Rule 104.10. The Carrier claims that the assessed discipline to the Claimant is in accordance with their policy, for which a single infraction can result in dismissal. It is the Carrier's position that the Claimant stole time and was dishonest about his treatment program attendance. This is Claimant's second dismissal. It is the Carrier's position that the Claimant's dismissal was not harsh or excessive given the Claimant's record and aggravating circumstances.

RESULT:

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


As to the procedural issue at hand, this Board acknowledges that the Carrier did not introduce the disciplinary policy and therefore this Board makes its determination without the benefit of that policy. However, the Claimant lied to the Carrier and was only allowed time off because of what he told the Carrier. The Carrier relied upon the fact that the Claimant was going to the court mandated pre-trial intervention program. However, the record clearly shows that the Claimant lied and did not attend this program.

There is extensive arbitral jurisprudence that an employee who lies to a carrier, regardless of past disciplinary history, is subject to the most extreme discipline. Therefore, even though the

Carrier failed to provide the disciplinary policy to the Board, this Board finds that the dismissal was appropriate based on the flagrant lies the Claimant told the Carrier.

AWARD:

The claim is denied.


Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL