

**PUBLIC LAW BOARD NO. 7529
CASE NO. 97
AWARD NO. 97**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization file: 21002615))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.		
(Carrier file: 2015-189235)		

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

1. *The Carrier’s dismissal of Claimant J. Jones for the alleged violation of CSXT Operating Rules 100.1, 104.4 and 711.2 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D21002615/2015-189235 CSX).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant J. Jones 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. During the time of the incident the Claimant was the foreman while traversing a diamond on the Callahan Subdivision. The Claimant is responsible for following all procedures for getting across the intersection. The incident involved the failure of the Claimant to follow instructions before crossing the intersection. The Claimant claims that he crossed through the diamond to the best of his ability based on the training that he received. On April 21, 2015, the Claimant was charged with the failure to safely perform his duties and dishonesty. After an investigation, Claimant was dismissed for violating CSXT Operating Rules 100.1, 104.4 and 711.2.

The Organization appeals that decision to 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. The record also established that the Carrier has not met its burden of proof in its determination that the Claimant has violated CSX Operating Rules and even if it has, the discipline imposed is arbitrary and unwarranted. It is their belief that the Claimant conducted himself in the manner in which he had been trained to do. The Claimant states that he properly had his gang stop short and requested to proceed through the area. He waited for what he believed was the required amount of time and directed his gang to proceed. The Carrier offers nothing but innuendo that the Claimant lied in support for his charge. Further, it is the Organization's position that the Claimant was a long serving employee and a dependable worker who was trained and qualified in numerous job classifications.

POSITION OF THE CARRIER:

The Carrier's position is that the Claimant was granted his due process rights as provided under Rule 25 of the Agreement. The Claimant was granted a fair and impartial hearing where he received proper notice of the charge, sufficient time to prepare a defense, the opportunity to present and examine evidence, and the opportunity to present and cross-examine witnesses. The Carrier states they have met their burden in determining that the Claimant violated CSX Operating Rules 100.1 and 104.4 and 711.2. In support they assert that the Claimant approached the signal box for the diamond and instructed his team through the intersection after waiting 4 minutes and 50 seconds despite the instructions specifically stating that the Claimant was to wait 12 minutes and then an additional 6 minutes before moving through the intersection. Further, the Claimant did not deny the instructions and the signal log establishing that he waited less than five minutes. The Claimant's responsibility is especially heightened because of the intersection and the potential for collisions. The Carrier asserts that the Claimant's actions demonstrate his violations of the rules when he endangered the lives of his team and those on the NS train. The Carrier states that the discipline is proper because this is a Major Offense and therefore it is reasonable.

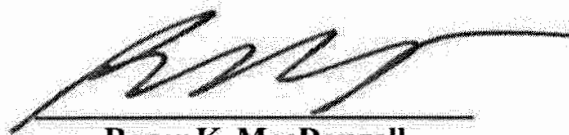
RESULT:

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

There is no dispute as to whether the Claimant waited the required amount of time. Based on the evidence before this Board, the record clearly shows that the Claimant waited four (4) minutes and fifty (50) seconds rather than the required eighteen (18) minutes, which was posted clearly in the signal box. The Board finds that the Claimant's excuse of simply misjudging the time is not credible. The Claimant lied in his statements and failed to follow instructions. Therefore, the Carrier has met its burden of proof.

AWARD:

The claim denied.



Roger K. MacDougall
Chair and Neutral Member

Dated:

2/17/2017

At: Chicago, IL