PUBLIC LAW BOARD NO. 6965

Award No. 136

PARTIES

System Council No. 6 of the International Brotherhood of Electrical Workers

TO

-and-

DISPUTE

CSX Transportation, Inc.

STATEMENT OF CLAIM

In accordance with the controlling Agreement, between System Council No. 9, of the International Brotherhood of Electrical Workers and CSX Transportation Inc., we are herein instituting claim on behalf of Electrical Worker W. H. Delamater (731001), as a result of Carrier's unjust discipline, consisting of a thirty-eight (38) day "Time Served" suspension.

Carrier's assessment of discipline is a violation of the controlling Agreement, in particular but not limited to Rule 30, and can only be viewed as an abuse of managerial discretion, that the Carrier's actions were arbitrary, discriminatory and capricious, when it disciplined Electrical Worker Delamater.

We, the Electrical Workers Committee, therefore request Electrical Worker Delamater be compensated for any and all lost wages, including lost work opportunities, as a result of this unjust discipline; that Electrical Worker Delamater be made whole for all fringe benefits, including but not limited to health, dental disability and life insurance, vacation and retirement credits, to which he would be entitled by virtue of his continued employment as an Electrical Worker; and Electrical Worker Delamater's personal record be expunged of any and all references to this unjust discipline.

FINDINGS

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Board has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

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The Claimant was assessed discipline of Time Served following a formal investigation in connection with the following:

...information received that on February 11, 2021, at approximately 2030 hours, while working at or near the Locomotive Shop, you were insubordinate when you refused to stay for overtime after being forced after the overtime list was exhausted, and all circumstances relating thereto.

At the formal investigation, Shop Supervisor Jones testified that on the subject date, there was a need to fill a vacancy on the third shift and in attempting to do so, he had exhausted the overtime list. Supervisor Jones stated that he then advised the Claimant, who was working second shift, that he would be forced to work four hours overtime on the third shift. Mr. Jones testified that the Claimant stated that he was not staying and that he didn't agree with forced overtime and when shown a copy of the agreement language regarding the assigning of overtime, the Claimant calmly stated "Thank you, I'm not staying." The record also indicates that shortly thereafter, the Claimant had a similar conversation with the Assistant Superintendent, where he was again advised that the forcing of the overtime was consistent with the agreement and the Claimant again replied that he was not staying to work the overtime.

When the Claimant testified at the investigation, he acknowledged that the testimony of Supervisor Jones and the Assistant Superintendent were accurate. When asked to explain his action, the Claimant stated that he had never been forced to work overtime in the past and he felt that being forced to work overtime was an infringement on his personal liberty. While the Board is not convinced that the Claimant's refusal rose to the level of insubordination as that term is generally defined in this industry; however, it is not disputed that the Claimant failed to work overtime after being advised to do so by his supervisors and improperly decided to leave after the end of his shift. If the Claimant honestly felt that the Carrier's action was improper, he should have worked the overtime and grieved later.

Relative to the discipline assessed in this case, the Board has taken into consideration the fact that the record indicates that while the Claimant improperly refused to work the overtime, his demeanor was calm and at no time was he loud or belligerent. Also, the Board has taken note of the fact that the Claimant had 22 years of service with the Carrier with an unblemished disciplinary record. Based on all the circumstances in this case, the Board finds that the discipline of thirty-eight (38) days' suspension was excessive and rules that the discipline should be reduced to a twenty (20) day actual suspension and the Claimant should be paid for time lost beyond the twenty days in accordance with the terms of the controlling agreement.

AWARD

Claim sustained to the extent provided in the Findings. The Carrier is directed to make the Award effective within 30 days of the date of this Award.

Joseph W. Fagnam, Neutral Memo

Tom Owens

Employee Member

John Ingoldsby

DATED: 08/31/2022