

PUBLIC LAW BOARD NO. 6965

Award No. 138

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 and appealing the decision of General Manager Coal & Ore Terminal – A. S. Young. The unjust decision of Mr. Young, dated August 11, 2021 dismissing T. M. Pezzella, Electrician – ID No. 243763, in all capacities from the service of CSX Transportation is unacceptable.

We, the Electrical Workers Committee, therefore request Electrical Worker Pezzella be compensated for any and all lost wages, including lost work opportunities, as a result of this unjust discipline; that Electrical Worker Pezzella 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 his 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.

The Claimant was dismissed from the Carrier's service following a formal investigation in connection with the following:

...information received on June 17, 2021, that on June 17, 2021, at approximately 0715 hours, and on May 19, 2021, at approximately 0915 hours, while working at or near the Main office, you were dishonest when you alleged you did not use a

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pry bar on May 19, 2021 in Mr. Young's Office, and all circumstances relating thereto.

Initially, the Board notes that there was a great deal of discussion during the investigation regarding the proper method of uncoupling cars and whether the use of a pry bar is acceptable under any circumstances. However, the Claimant was not charged with improperly uncoupling a car or misusing a pry bar but rather for allegedly being dishonest when he described how he sustained an injury on the subject date and the Board's decision will be limited to that particular charge.

At the formal investigation, Terminal Manager Tylka entered into the record a statement that the Claimant submitted relative to an injury he sustained while on duty. In his statement, the Claimant wrote that while working on the dumping operations, he attempted to cut a car and when he pulled on the cutting lever, the couplers did not separate, resulting in an injury to his left shoulder. Manager Tylka testified that he was advised that a Mr. Baisden, an employee of PCMA, had reported that he had observed the Claimant attempting to uncouple the car using a pry bar. Mr. Tylka stated that he approached the Claimant and asked if he wanted to amend his statement and the Claimant replied in the negative and when advised of Mr. Baisden's statement, the Claimant denied using a pry bar. Mr. Baisden also testified at the investigation and stated that he was in his truck stationed about 50 to 60 feet from the scene of the incident and that he observed the Claimant apparently having trouble with the uncoupling and that the Claimant retrieved a pry bar and used it to pry open the knuckle.

When the Claimant testified at the investigation, he denied that he used a pry bar to open the knuckle, either on the date of the incident, or at any other time during his career. The Organization has also disputed Mr. Baisden's version of the events, contending that Mr. Baisden would not have had a clear view of the Claimant on the date in question.

Obviously, there is a conflict of testimony. Numerous arbitration awards in the railroad industry have consistently held that when such conflict exists, the Hearing Officer, as the trier of facts, is in the best position to determine the credibility of witnesses and that this Board, in its appellate capacity, should not disturb such finding absent evidence or prejudicial conduct on the part of the Carrier. No such evidence is present herein. Also, the Board can not find a reason, nor has any credible reason been forwarded to indicate why Mr. Baisden would have misrepresented his observations of the Claimant.

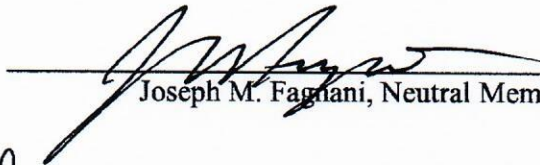
Relative to the discipline of dismissal assessed in this case, the Carrier submits that the Claimant's dishonesty was a major offense under its IDPAP policy and that, consistent with that policy, the Claimant was subject to dismissal. The Organization strenuously argues that the discipline was unduly harsh and excessive. Without attempting to lessen the severity of the Claimant's offense, the Board has also taken into consideration that the Claimant had over 10 years of service with the Carrier and based on the record supplied by the Carrier, the Claimant only had one formal reprimand on his

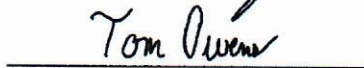
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disciplinary record. Based on the entire record, the Board finds that the Claimant should be given another opportunity to demonstrate to the Carrier that he can be an honest and trust worthy employee. Accordingly, the Board rules that the Claimant should be reinstated to service with seniority unimpaired, but without payment for time lost.

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 M. Faghani, Neutral Member


Tom Owens
Employee Member


John Ingoldsby
Carrier Member

DATED: 08/31/2022