

PUBLIC LAW BOARD No. 7265

PARTIES TO THE DISPUTE:

**BROTHERHOOD OF LOCOMOTIVE
ENGINEERS & TRAINEMEN -IBT**

- and -

**CASE NO. 23
AWARD NO. 23**

CSX TRANSPORTION, INC.

QUESTIONS AT ISSUE:

1. Does CSXT's CAPS Policy effective March 1, 2015 meet the required standard of reasonableness?
2. Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Article 30 of the BLET Single System Agreement 1-023-07 as amended by denying employees their due process rights to a fair and impartial hearing during Step 1 and Step 2 of the process?
3. Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Article 45 Paragraph C of the BLET Single System Agreement 1-023-07 as amended by denying good credit to an employee who exercises his right to a contractually protected absence?
4. Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Side Letter 1 of the BLET Single System Agreement 1-023-07 as amended by assessing points to employees who provide a valid doctor's excuse?
5. Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Side Letter 1 of the BLET Single System Agreement 1-023-07 as amended by assessing points to employees who have provided documentation of hospitalization and/or emergency room treatment?
6. Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Side Letter 13 of the BLET Single System Agreement 1-023-07 as amended by refusing to remove Step 1 or Step 2 from the employee's service record following a clear record for the first or second 6 months of a calendar year?

FINDINGS:

This Public Law Board No. 7265 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

1.

The Carrier instituted a Crew Attendance Point System (CAPS) effective March 1, 2015 with the objective to assist employees in understanding their attendance obligations and the consequences of the failure to meet these obligations including "providing a reasonable and objective basis for the imposition of discipline for instances of non-attendance".

It is well settled that the Carrier may establish reasonable policies with respect to employee attendance, so long as the policies do not conflict with the provisions of the Agreements, NRAB Third Division Award No. 36544 (Kenis).

The Carrier's CAPS attendance policy sets forth the following "Handling Schedule" in part as follows:

ATTENDANCE HANDLING SCHEDULE		
Step	Accumulated Points	Handling
1	≥20	Counseling Letter 1
2	≥20	Counseling Letter 2
3	≥20	Formal Reprimand (Subject to CBA Discipline Procedures)
4	≥20*	Dismissal (Subject to CBA Discipline Procedures)

The Carrier states that Step 1 and Step 2 are non-disciplinary in nature and merely for employee's accounting in a no fault system, allowing for multiple absences or missed calls before handling within the discipline process outlined in Article 30 of the SSA. It states that its CAPS point system does not handle employees for discipline until the employee's behavior meets the point threshold contained in the policy, which is at Step 3.

The counseling letters issued at Step 1 and Step 2 are not discipline, according to the Carrier. It states counseling is not discipline.

Certainly the Carrier has the right to place letters regarding counseling in the files of employees so long as the letters do not accuse the employee of prohibited conduct and are not used by the Carrier as the first step of discipline. See NRAB Second Division Award No. 13639 (Kenis). See also NRAB Third Division Award No. 29872 (Gold).

In Award No. 10 of PLB No. 7089, UTU and CSXT, the Board upheld the dismissal of the Claimant for the violation of the then disciplinary guidelines for periods of unavailability outlined in System Notice 102, which stated as follows:

Existing attendance discipline progression process will not change.

First 2 failures handled with warning letters.

First investigation – 2 days overhead for 6 months.

Second investigation – 5 days actual suspension.

Third investigation – discipline assessed – up to dismissal.

In the current CAPS policy, the labels used by the Carrier have changed from the System Notice 102 discipline guidelines, but the Carrier is continuing to address the disciplinary problems of attendance utilizing a cumulative progressive disciplinary ladder starting with Step 1, which is issued upon the accumulation of 20 attendance-related points and is contrary to non-disciplinary "counseling" referenced in the Second Division Award No. 13639 (Kenis).

Step 2 on the CAPS cumulative disciplinary schedule is reached when accumulated attendance incidents again reach 20 points and the Carrier issues its disciplinary Counseling Letter. Step 3 and 4 are admittedly cumulative progressive disciplinary steps.

ANSWERS TO QUESTIONS AT ISSUE

QUESTION 1: Does CSXT's CAPS Policy effective March 1, 2015 meet the required standard of reasonableness?

ANSWER: Yes – Based on this Board's answers to Questions 2-6 of this Award.

QUESTION 2: Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Article 30 of the BLET Single System Agreement 1-023-07 as amended by denying employees their due process rights to a fair and impartial hearing during Step 1 and Step 2 of the process?

ANSWER: Yes – As stated previously, Steps 1 and 2 of the CAPS policy are discipline and under Article 30 employees shall not be disciplined without a fair and impartial hearing.

QUESTION 3: Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Article 45 Paragraph C of the BLET Single System Agreement 1-023-07 as amended by denying good credit to an employee who exercises his right to a contractually protected absence?

ANSWER: No – The CAPS policy does not conflict with the provisions of Article 45, Paragraph C of the BLET Single System Agreements 1-023-07 as amended. Article 45, C reduces the guarantee for engineers who miss their turn when exercising their right to a personal business mark off. The same principle must apply to the good credit monthly availability under the CAPS policy. Engineers who mark off personal business and miss their turn are not entitled to the good attendance credit available under the CAPS policy.

QUESTION 4: Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Side Letter 1 of the BLET Single System Agreement 1-023-07 as amended by assessing points to employees who provide a valid doctor's excuse?

ANSWER: No – as long as the employee has submitted a valid doctor's excuse to cover the absence as provided in Side Letter 1, then no points will be assessed.

QUESTION 5: Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Side Letter 1 of the BLET Single System Agreement 1-023-07 as amended by assessing points to employees who have provided documentation of hospitalization and/or emergency room treatment?


ANSWER: No – as long as the employee has submitted valid emergency room/hospitalization documentations to cover the absence as provided in Side Letter 1, then no points will be assessed.

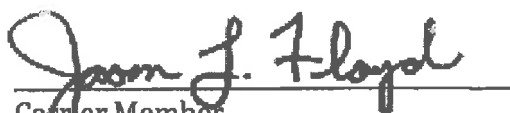
QUESTION 6: Does CSXT's CAPS Policy effective March 1, 2015 conflict with the provisions of Side Letter 13 of the BLET Single System Agreement 1-023-07 as amended by refusing to remove Step 1 or Step 2 from the employee's service record following a clear record for the first or second 6 months of a calendar year?

ANSWER: Yes – As discussed in the Findings, Step 1 and Step 2 are disciplinary entries on the employee's service record and under Side Letter #13 Engineers with at least five years of engine service seniority are entitled to have one (1) disciplinary entry cancelled for each six (6) month period worked with a clear record in a calendar year, or a maximum of two per year.

AWARD

The Questions at Issue are answered in the affirmative – yes; and the negative – no, as set forth in the Findings.


Chairman and Neutral Member


Carrier Member


Organizational Member

Dated: 4/16/19