

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43093
Docket No. MW-44059
18-3-NRAB-00003-170133**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
PARTIES TO DISPUTE: (IBT Rail Conference
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(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier, by letter dated July 13, 2015, dismissed Claimant A. Drain from service on the basis of an alleged violation of CSXT Operating Rules 100.1, 103.3 and 104.2 (System File D70183315/289105 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall remove all matters relative to the discipline from the Claimant’s personnel file and he should be made whole for all losses suffered, including back pay, medical, vacation and retirement.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At all times relevant to this dispute, the Claimant was employed by the Carrier on a floating welding team in the vicinity of the Flomaton Depot. On April 29, 2015 the Claimant was observed taking a case of water from the Depot without permission and placing it in his personal vehicle. When confronted by management, the Claimant stated that he was taking the water to the hotel. He was then asked what hotel, whereupon he admitted that he was taking the water home. He then provided a written statement saying, "Got some water to take to the house. Water got cut off at the house. Need to take a wash up and brush teeth."

The Claimant was consequently removed from service and directed to attend a formal Investigation at which he was charged with removing bottled water from the Flomaton Depot for personal use without permission. The Claimant did not appear at the Investigation and had not made contact with either the Carrier or the Organization's representative. The Investigation was conducted *in absentia* and resulted in the Claimant's dismissal from service.

In light of the Claimant's written admission that he took the water for his personal use, we find that the Carrier had substantial evidence to support its charge against him. Operating Rule 103.3 prohibits the unauthorized removal of any material from CSX property. The Claimant's conduct constituted theft, which is a dismissible offense. We find no basis for modifying the discipline imposed.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 2nd day of May 2018.