PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION OF THE
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

In connection with the objections raised at the beginning of, and during the hearing, the reasons stated in this appeal, and furthermore [sic] violations of the Agreement, we hereby request Mr. M.A. Portmess, ID#*****, be exonerated from these charges against him and all matter relative thereof, including the letter dated November 4, 2005 by Mr. D.A. Oram, would be removed from his personal file. The reference to 30 days suspension should not be applied due to the fact the Carrier has not concluded that the charges against Mr. Portmess should be upheld. Mr. Portmess shall be compensated for all lost wages and benefits incurred by Mr. Portmess as a result of the Carrier's actions and ultimate violation of Rule 24 and 25 of the June 1, 1999 Agreement.

OPINION OF THE BOARD:

M. A. Portmess (hereinafter referred to as "Claimant") was hired by CSXT in the Engineering Department on April 7, 1980. At all times relevant to this issue, Claimant was assigned as a Machine Operator on System Production Gang ("SPG") 6XC5.

On August 24, 2006, the date this issue arose, Claimant and his gang were working in the vicinity of Somerset, PA. The record demonstrates that while the gang worked in the area, Carrier provided lodging at the Somerset Quality Inn, a fact pertinent to this dispute. At approximately 7

p.m. on the evening of August 24, Claimant was in the Quality Inn bar where he consumed "several" bottles of beer. Some two and one-half (21/2) hours later, the Claimant began "agitating" the waitress/bartender. After making numerous confrontational remarks, the Claimant left the bar only to return shortly thereafter to again "harangue" the waitress/bartender. Claimant repeated this behavior several times, finally checking himself out of the Inn, "just prior to facing expulsion by the Quality Inn management".

After leaving the bar for the final time, Claimant got in his vehicle and drove back to his home in Cumberland, MD. Subsequently, the waitress/bartender whom the Claimant harassed, as well as the manager of the Inn, each completed an "Incident Documentation Form" with the Pennsylvania Liquor Control Board. The document stipulated that the Claimant was "banned from entering the premises of the Somerset Quality Inn for life".

Due to the Claimant's departure on the evening of August 24, he did not report for his scheduled work day on August 25. Upon investigating the Claimant's unanticipated and unreported absence, Manager System Production Teams (SPT) R. Ferri discovered that Portmess had been involved in "a verbal altercation with a waitress at Carrier provided lodging" on the previous evening. Thereafter, by letter dated September 12, 2005, the Claimant was instructed to attend a formal investigation, to be held on September 21, 2005, as he was being charged with "conduct unbecoming an employee of CSX Transportation, and with possible violations of, but not limited to, CSX Transportation Operating Rules-General Regulations GR-2 and GR-2A, as well as CSX Transportation Policy Statement on Harassment and CSX Policy on Workplace Violence".

The aforementioned charges came as a result of a report Carrier received stating that: "*....while in the bar it is reported that the Claimant repeatedly harassed and threatened the staff and*

patrons of the facility resulting in Claimant being banned from the facility...". After one (1) postponement at the Organization's request, the hearing was held to completion on October 26, 2005, with both the Claimant and his representative in attendance throughout same. By letter dated November 4, 2005, Claimant Portmess was informed that he had been found guilty of the charges(s), and as a result, was being assessed a thirty (30) day suspension.

BMWE Vice Chairman Griffith appealed the discipline, initially maintaining that: "*This Organization takes strong exception to the fact that the terms of the Agreement were not complied with in accordance with Rule 24[i]. The request for this management information was made prior to the hearing not once, but twice...*". The Vice Chairman went on to assert that: "*The Quality Inn did not contact the authorities during the so-called altercation. Mr. Portmess was not charged by authorities of any wrongdoing. There is no evidence provided that there was an alteration between Mr. Portmess and another patron of the Motel, only a conversation with a patron described as a 'Teamster',...there is much hearsay information provided by charging Officer R. Ferri...*". Finally, the Vice Chairman argued that the discipline assessed was "unfair and capricious".

In his denial Carrier Director Wilson rejected the Organization's argument requesting pre-investigation discovery noting that: "*Carrier reiterates that Rule 24 is not applicable to the investigation procedures under Rule 25. Rule 25 does not specify that either the testimony or materials provided in affidavit form or as material evidence as a court of law may require in advance of a hearing*". Director Wilson went on to note that the evidentiary proof "especially the incident report completed by the hotel management", clearly established that Claimant was guilty. In that regard, Mr. Wilson went on to state: "*The incident report indicated that Mr. Portmess had been involved in an altercation with (waitress) J. Kennedy, wherein Mr. Portmess alleged that he*

had been robbed. The description of the incident as documented on the form indicates that Mr. Portmess was harassing the bartender, accused her of stealing, irritating other patrons, and making comments". Therefore, the evidence "clearly" demonstrated that Carrier was accurate in determining the Claimant's guilt, according to Mr. Wilson. Finally, Mr. Wilson argued that: "*CSXT is committed to provide a safe place for its employees to work...there is no basis to modify or overturn the discipline imposed. The discipline assessed is not excessive but is commensurate with the nature of the proven offense*".

Vice Chairman Griffith sent a final rejection of Carrier's decision in a letter dated July 2, 2006. However, Carrier maintained that the letter was "void" of any new arguments and was "merely a reiteration" of discussions previously addressed in earlier correspondence. As the Parties were unable to resolve the dispute, it is listed before this Board for adjudication.

Careful review of the transcript of the investigation reveals that all of Claimant Portmess' due process rights, as provided for under Rule 25 (Discipline) of the Agreement were fully protected, and the hearing was conducted in a fair and impartial manner. The Organization argued that Carrier did not provide "pertinent documents" prior to the hearing. However, the Organization's reliance upon rule 24[i] is misplaced in the circumstances, rendering their argument in that regard moot.

Turning to the merits of the dispute, the Carrier adduced substantial probative evidence that Claimant Portness engaged in the culpable misconduct with which he was charged. There are no fatal procedural flaws in the hearing and investigation, the proven misconduct is unacceptable behavior which the carrier need not tolerate and which this Board will not condone. There is no showing that the penalty imposed was unreasonable or disproportionate to the offense nor is there any other reason shown for this Board to disturb the disciplinary action taken by the Carrier.

AWARD

Claim denied.

Nancy Faircloth Eischen, Chairman

Union Member 1-23-08

Company Member 1-23-08