

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 24
vs.)	AWARD NO. 24
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman Anthony C. Wilson for violation of Rule G in connection with being under the influence of prescription medication that adversely affected his alertness, coordination, reaction, response or safety, while on duty is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File D70714307/2007-002917CT).
2. As a consequence of Part I above, we request that Mr. Wilson be exonerated and that the charge letter and all matters relative thereto be removed from Mr. Wilson’s personal file, he be returned to the employment of CSX Transportation and be made whole for all losses suffered as a result of the Carrier’s actions.”

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The facts of this case are not in dispute. The Claimant had been employed by the Carrier as a trackman since 2002. On September 13, 2007, Claimant was the principal in an investigation of a charge of sleeping on duty, which is before this Board in Case No. 34. During that investigation, Claimant testified that he had taken medication which had the possible side effect of lightheadedness. He also testified that he experienced that condition on August 21, 2007, and was sitting in a machine, reclining and with his eyes closed, when a Carrier officer observed him and accused him of sleeping. At the

investigation, Claimant produced a physician's note substantiating that he was taking medication which could cause lightheadedness and recommending that Claimant close his eyes and rest for a minute or two should that occur. As a result of this information, the Carrier medically disqualified Claimant from duty, and, on September 28, 2007, Claimant was charged to attend a formal investigation, as follows:

The purpose of this investigation is to determine the facts and place your responsibility, if any, in connection with information . . . received . . . when, during an investigation that was being conducted with you as Principal, you admitted to being under the influence of a prescription drug that adversely affects your alertness, coordination, reaction, response or safety, while on duty and under pay.

The Carrier offered Claimant a "Rule G" bypass in lieu of an investigation, which he declined. Following the investigation, the Carrier found Claimant guilty of the charges and dismissed him from service.

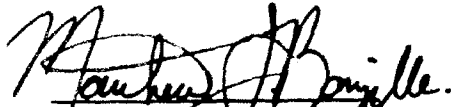
We have carefully reviewed the record in its entirety. Claimant admitted that he was using medication that could cause lightheadedness, that he deliberately failed to so inform the Carrier prior to the time he was observed by the Carrier officer, and that he did not remove himself from service even though he was aware of the medication's possible side effects. Claimant's conduct was a clear violation of Rule G, which prohibits an employee from reporting for duty or performing service while using any substance, including prescription medication, which could in any way adversely affect the employee's alertness, coordination, reaction, response or safety. Thus, his guilt has been proven.

However, we find, under the particular circumstances of this case, that dismissal is too harsh and represents an unfair, arbitrary and discriminatory exercise of the Carrier's discretion to determine penalties. We find it instead appropriate to order Claimant reinstated, without backpay, subject to his participation in the Carrier's Employee Assistance Program, and further subject to the EAP's determination that he is medically qualified to return to service.

AWARD

Claim sustained in accordance with findings.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member

Dated this 16th day of Nov., 2009.


TIMOTHY KREKE
Organization Member

11/16/2009