

**PUBLIC LAW BOARD NO. 7163**

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division – IBT Rail Conference

Award No. 364  
Case No. 364

-and-

CSX Transportation, Inc.

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. A. Willis, by letter dated October 5, 2017, in connection with allegations that he violated CSX Transportation Operating Rule 104.2(a)(b) was arbitrary, unsupported, unwarranted and in violation of the Agreement. (System File **91414417/2017-227567 CSX**)
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Willis' dismissal shall be set aside and he shall:  
be made whole for all financial and benefit losses as a result of the violation. Any benefits lost, including vacation and health insurance benefits including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:
  - 1) Straight time for each regular work day lost and holiday pay for each holiday lost to be paid in the rate of the position assigned to Mr. Willis at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Willis while wrongfully suspended);
  - 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Mr. Willis was out of service;
  - 3) Overtime pay for lost overtime opportunities based on overtime for any position he could have held during the time Mr. Willis was suspended from service, or on overtime aid to any junior employee for work Mr. Willis could have performed had he not been removed from service;

- 4) Health, dental and vision care insurance premiums, deductibles and co-pays that he would have paid had he not been unjustly dismissed.

All notations of this dismissal should be removed from all carrier records’.

**FINDINGS:**

This Public Law Board No. 7163 finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated October 5, 2017, the Claimant, Machine Operator A.M. Willis was notified by the Carrier that he was assessed the discipline of dismissal in all capacities from CSXT Transportation as follows:

Dear A.M. Willis:

This is in reference to the formal investigation that was held on Thursday, September 21, 2017, in the Conference Room at 12780 Levan Road, Livonia, Michigan. The notice of formal investigation, transcript and exhibits reviewed and discussed during the course of the investigation are included in this packet.

Based on the evidence presented during the course of hearing, substantial evidence was revealed demonstrating that you violated CSX Transportation Operating Rule 104.2(a)(b).

Upon my analysis of all factors related herein, the discipline to be assessed is your immediate dismissal in all capacities from CSXT Transportation.

Please arrange to return any company materials in your possession to any Supervisor at the nearest CSX location.

s/C.D. Ramsey  
Division Engineer-Chicago

The Organization appealed the discipline, and the matter has been properly progressed to this Board for adjudication.

The Claimant, Mr. A.M. Willis, Sr. underwent FRA random toxicological testing on August 17, 2017. A urine sample was given by the Claimant to the collector and a custody and

control for, Specimen No. 019052217 was signed by the Claimant and collector and the specimen released to Fed Ex at 07:22 on August 17, 2017. The Medical Review Officer Final Report dated August 28, 2017 referenced the collection date of August 17, 2017 at 07:22 A.M. specimen number 0109052217 which is consistent with the drug chain of custody form that Claimant completed on August 17, 2017. The Medical Review Officer Final Report indicated as follows:

Status of Drug Test: POSITIVE  
6-MONACETYLMORPHINE – Positive  
SPECIMEN IS ALSO SUBSTITUTED: NOT CONSISTENT WITH NORMAL HUMAN URINE. THIS IS A REFUSAL TO TEST.

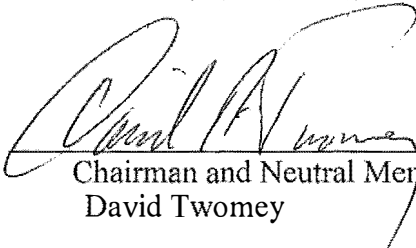
A substituted specimen, not consistent with normal human urine is considered a refusal to test, and classified as insubordination in violation of rule 104.1, section (a) and (b), and a major offense.

The Claimant was asked if he received a call from an MRO (Medical Review Officer) after the test to advise him of the result, and he responded that he did – that a lab tech from the place called him and said that he tested positive for heroin metabolites and that the Claimant told him no. (Tr. 41) And, he testified in answer to questions by his representative that he was never offered an opportunity to have a split specimen tested. (Tr. 49) We are compelled to find that the MRO, Paul Chang, MD, had the responsibility to contact the Claimant and was obligated to tell this employee that the laboratory has determined that the employee tested positive, adulterated, substituted, or invalid as applicable. Dr. Chang, of the independent third party Medical Review Officer, University Services, Toxicology Services Group had the duty to give the donor the opportunity to test his split specimen if the donor chose to do so. We find that Dr. Chang certified that the test was conducted in accordance with 49 CFR Part 40 and Part 219 which is substantial evidence of record that he complied with all relevant regulations including

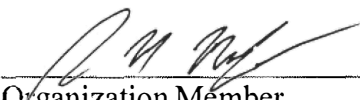
offering the Claimant the opportunity to test his split specimen prior to releasing the test results  
in the Final Report.

We must deny this claim.

Award  
Claim denied.

  
Chairman and Neutral Member  
David Twomey

Carrier Member  
Katrina Donovan  
Dated: \_\_\_\_\_

  
Organization Member  
Andrew Mulford  
Dated 3/14/19