

PUBLIC LAW BOARD NO. 7163

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

vs.

**Case No. 435
Award No. 435
Organization No. D91503618
Carrier No. 18-86666**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (time served) of Mr. S. Morgret, by letter dated July 16, 2018, in connection with allegations that he violated CSX Transportation Rules 104.4(b) and 106.1 Drugs and Alcohol was arbitrary, capricious, unnecessary and excessive (System File D91503618/18-86666 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Morgret shall be fully exonerated and made whole.”

JURISDICTION

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

FINDINGS

The Carrier hired S. Morgret (“Claimant”) on July 8, 2002. The Carrier through Assistant Division Engineer of Structures Jeffrey Wallace became aware via a news article which described Claimant’s arrest on May 6, 2018, for controlled dangerous substance (CDS) possession, driving under the influence, driving while impaired by controlled dangerous substance and related traffic charges while off duty. The news article was sent to Wallace by CSX Bridge Manager Jason Lance. Claimant was formally charged with driving while under the influence of alcohol, driving in a vehicle while so far impaired by drugs and alcohol cannot drive safely, driving vehicle while impaired by a

controlled dangerous substance, driving vehicle while impaired by alcohol, and CDS possession – not marijuana.

The investigative hearing for this incident was held on June 26, 2018. During the investigation, Claimant testified that he had a prescription for the CDS (Suboxone) but did not have it on him at the time of the arrest. Additionally, at the time of the incident, Claimant was near completion of a Carrier EAP service plan which ended on May 8, 2018. Pursuant to this plan, he had a return to work date of May 18, 2018.

On July 16, 2018, Claimant was found culpable of violating CSX Transportation Rules 104.4b., and 106.1. and was assessed a time-served suspension of sixty-nine (69) days. The Organization appealed Claimant's dismissal on August 14, 2018. Claimant ultimately pled guilty to driving while under the influence of alcohol on August 31, 2018. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on October 26, 2018. The parties were ultimately unable to resolve the dispute and the matter now comes before this Board for final adjudication. The applicable rules are as follows:

Rule 104.4(b) states:

The following behaviors are prohibited at all times:

(b) Criminal conduct that may damage CSX's reputation or that endangers CSX property, employees, customers, or the public.

Rule 106.1 states:

The illegal possession or use of a drug, narcotic, or other substance that affects alertness, coordination, reaction, response, or safety is prohibited both on and off duty.

In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence *de novo*. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record

that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion.

The Board finds substantial evidence in the record to uphold the Carrier's position regarding violation of Rule 104.4(b) but does not find substantial evidence to uphold a violation of Rule 106.1. It was not proven that Claimant was in possession of an illegal substance. Claimant provided un rebutted testimony that he had a prescription for the CDS (Suboxone). Claimant ultimately pled guilty to criminal conduct which endangered the public. While Claimant's off-duty conduct was disruptive to the workplace in that various employees became aware of the incident, it did not rise to the level of impacting the reputation of the Carrier in the general public, but it certainly could have. Further, the conduct endangered the public's safety. Accordingly, the suspension shall be reduced to a 45-day suspension. Claimant shall be made whole.

AWARD

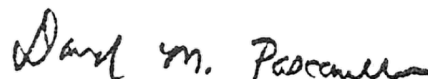
Claim sustained, in part. The suspension shall be reduced to 45 days and Claimant made whole. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



David M. Pascarella
Employee Member

Dated: 9/20/2021