

AWARD NO. 445

Case No. 445

Organization File No. D91410418

Carrier File No. 18-40765

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,
TO) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
)
)
DISPUTE) CSX TRANSPORTATION, INC.

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

1. The Carrier's discipline (dismissal) of Mr. R. Paul, by letter dated December 4, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.2(b) and 106.1 was arbitrary, capricious, unnecessary and excessive (System File D91410418/18-40765 CSX).

2. As a consequence of the violation referred to in Part 1 above:

'... the suspension shall be set aside, and the Claimant shall be made whole for all financial and benefit losses that occurred beginning from the date the Claimant completed the EAP Program; and no later than November 15, 2018. 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. Paul at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Mr. Paul while wrongfully suspended);
- 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Mr. Paul 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. Paul was sus-

pended from service, or on overtime paid to any junior employee for work Mr. Paul 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 not have paid had he not been dismissed;

All notations of this dismissal should be removed from all carrier records.’ (Employees’ Exhibit ‘A-4’).”

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

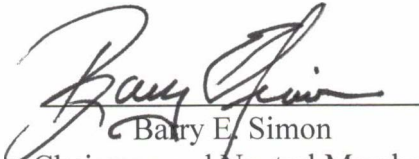
Following a formal investigation at which he was charged with failing to complete an FRA random drug and alcohol test on September 18, 2018, Claimant was dismissed from service. The Board has reviewed the record of the investigation and is satisfied that it establishes that Claimant was directed to submit a breath sample and a urine specimen. Because his urine specimen was less than 90°F, and not within the acceptable temperature range, he was directed to provide a second specimen. He was informed that his failure to do so would constitute a refusal to test, which could result in discipline up to and including discharge. Nevertheless, Claimant left the test site without providing the second specimen. At the investigation, Claimant admitted to these facts, and testified that he had smoked marijuana two days prior to the test.

On the basis of the record before us, we find that the Carrier had substantial evidence to support its charge against Claimant. Had Claimant failed the drug test, he would have had the option

of being referred to the Carrier's Employee Assistance Program under the parties' Bypass Agreement. A refusal to test, however, is not treated in the same manner as a test failure. Nevertheless, in consideration of the fact that Claimant had over eighteen years of service at the time of this incident, we will direct that he be reinstated to service with seniority rights unimpaired, but without compensation for time lost. As a condition of his reinstatement, he will be subject to the parties' Rule G Agreement, with this being considered a first failure.

In reaching this conclusion, the Board has considered all of the arguments advanced by the Organization and finds them to be unpersuasive in this case.

AWARD: Claim sustained in accordance with the above Findings. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.


Barry E. Simon
Chairman and Neutral Member


David M. Pascarella
Employee Member


John Nilon
Carrier Member

Dated: 8/9/21
Arlington Heights, Illinois