

AWARD NO. 449
Case No. 449

Organization File No. DRA900219
Carrier File No. 19-84892

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. G. Cole, by letter dated January 4, 2019, in connection with allegations that he violated CSX Transportation Operating Rules 100.1(2), 104.2(a), 104.3(b), 106.3(e) and CSX Employee Travel and Expense Policy 4.3 was arbitrary, capricious, unnecessary and excessive (System File DRA900219/ 19-84892 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Carrier must '*** clear all mention of the matter from Claimant's personal record, immediately return Claimant to service with rights and benefits unimpaired and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes health-care, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.' (Employees' Exhibit 'A-2')."

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.

By notice dated November 30, 2018, Claimant was directed to attend a formal investigation on December 11, 2018. In pertinent part, the Notice of Investigation stated:

The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with information received on November 26, 2018, that on November 23, 2018, at approximately 0800 hours, while working Job No. 6TG6, at or near Wildwood, FL, while staying at a corporate lodging hotel provide [sic] by the company, you cause [sic] a disturbance to other guests by having a domestic dispute with your significant other. Additionally, it was found that alcohol was brought to the property, which is prohibited by company policy, and all circumstances relating thereto.

The Notice of Investigation was amended to add the charge that Claimant, on November 10 and November 24, 2018, stayed at a corporate lodging hotel without authorization. Following the investigation, Claimant was dismissed from service.

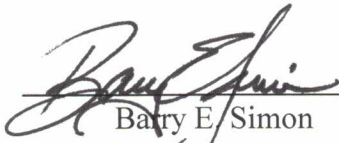
According to the Carrier, Claimant was staying at a company-provided lodging facility on November 23, 2018. Because of complaints from other guests at the hotel, police and emergency responders were called to an altercation in Claimant's room. Roadmaster Leon Bell reviewed security recordings showing the police arriving. He also observed Claimant leaving the hotel and returning with a case of beer. According to a police report, the woman in the room told police she and her husband were engaged in an argument and he "pushed her to the floor where she hit her head on the table." The reporting officer stated, "I was unable to determine the primary aggressor. All parties were intoxicated and neither party seemed to provide a consistent statement."

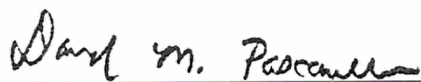
At the investigation, Claimant acknowledged that an altercation took place between himself and his spouse (or whoever was staying in the room with him). He admitted that this behavior was not respectful and courteous to the other guests of the hotel, and that he was in violation of Rule 104.3 by engaging in an altercation while occupying facilities provided by the Carrier. With respect to Rule 106.3, Claimant acknowledged that he was under the influence of alcohol while occupying

a company-provided facility. Finally, the Carrier asserts Claimant performed no service on November 10, but stayed in company-provided lodging to which he was not entitled.

Our review of the record, particularly Claimant's admissions that he was in violation of the Carrier's rules, establishes that the Carrier had substantial evidence to support its charges against him. We find that the discipline issued was neither arbitrary nor excessive. In reaching this decision, we have considered the various arguments raised by the Organization, but find them to be unpersuasive in this case.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


David M. Pascarella
Employee Member


John Nilon
Carrier Member

Dated: 8/9/21
Arlington Heights, Illinois