

AWARD NO. 458  
Case No. 458

Carrier File No. 19-62936  
05  
BMWE File: DRA901919

**PUBLIC LAW BOARD NO. 7163**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
 ) IBT RAIL CONFERENCE  
TO )  
 )  
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. McDonald in connection with allegations that he violated CSX Transportation Operating Rule 104.2 was excessive, extreme, unreasonable and harsh (System File DRA901919/19-62936 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 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 healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.”

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.

Claimant, R. McDonald, had been employed by the Carrier since January 9, 2006. At all times relevant herein, Claimant was working as an Assistant Foreman. On March 5, 2019, following an investigation, the Carrier found that Claimant had, in connection with an incident on January 9, 2019, undergone Carrier follow-up toxicological testing and that the Carrier's Medical Review Officer (MRO) had reviewed the testing results and determined that the specimen provided was not consistent with human urine, which was considered a refusal to test. The Carrier therefore concluded that Claimant was guilty of insubordination, in violation of Carrier Rule 104.2(b), and dismissed him from service.

The record shows that on January 17, 2018, Claimant committed to a drug and alcohol health plan administered by the Carrier's Employee Assistance Program (EAP), frequently offered to employees who commit a first drug/alcohol violation, generally referred to as a "Rule G" offense. That plan provided for follow-up testing, as Claimant acknowledged at the investigation. On January 9, 2019, he underwent such follow-up testing.

Although Claimant denied providing an adulterated sample, he acknowledged that the MRO told him during his post-testing interview that it was not possible for a human being to have the level of water found in Claimant's sample, as a person would have "drowned medically," and the level could not be explained by a medical condition. The record shows the testing was conducted in the usual manner, that Claimant was allowed the opportunity to have a "split sample," which showed the same results, tested and that the results were reported in the usual manner. Carrier witnesses fully explained the test results.

The Organization raises procedural and substantive objections to the discipline assessed against Claimant. We have considered the Organization's procedural contentions in detail, and as supported by arbitral precedent cited by the Carrier, find that there was nothing which deprived

Claimant of his right to a fair and impartial hearing. In particular, the Organization objected to the MRO's failure to testify at the hearing, but it is well established that such is not necessary for the Carrier to establish the validity of the test results.

The Carrier has met its burden of proving, by substantial evidence, that Claimant failed to provide a valid urine sample for testing. Under Carrier policy and Federal Railroad Administration rules, such a failure is deemed a refusal to test. It is also apparent that Claimant's action had to be deliberate, and we agree with the Carrier that his conduct was therefore insubordinate. As for the penalty, it is well established that insubordination is a serious offense for which an employee may be dismissed, even for a first violation. Here, Claimant's conduct also occurred in the context of a second "Rule G" violation, universally recognized in the industry as a dismissible offense. Therefore, we cannot say that the Carrier's decision to dismiss Claimant represents an unfair, arbitrary or discriminatory exercise of its discretion to determine the appropriate disciplinary penalty.

AWARD: Claim denied.



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Jacalyn J. Zimmerman  
Neutral Member



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Ross Glorioso  
Organization Member



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John Nilon  
Carrier Member

Dated: 8/16/2022