

AWARD NO. 484  
Case No. 484

Organization File No. D91502019  
Carrier File No. 19-15659

**PUBLIC LAW BOARD NO. 7163**

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

STATEMENT OF CLAIM:

1.     The Carrier's discipline (dismissal) of Mr. C. Thomas, by letter dated April 3, 2019, in connection with allegations that he violated CSX Transportation Operating Rules FRA 219.102, 107, 104.2b and CSX Random Drug-Testing Policy was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D91502019/19-15659 CSX).
2.     As a consequence of the violation referred to in Part 1 above, '... the Carrier shall immediately remove the matter from his personal record, immediately return him to service with all rights and benefits, unimpaired and compensate him for all loss suffered, including straight time, overtime and other lost compensation.' (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 March 4, 2019, Claimant was directed to attend a formal investigation to develop the facts and place your responsibility, if any, in connection [*sic*] information received February 27, 2019, that you underwent **FRA RANDOM** toxicological testing on

February 20, 2019, in the vicinity of Barboursville, WV and the Carrier's Medical Review Officer advised that the specimen provided was not consistent with normal human urine, which in accordance with Company policy and applicable federal regulations is considered a refusal to test, and all circumstances relating thereto.

Following the investigation, Claimant was dismissed from service effective April 3, 2019.



The Organization first asserts Claimant was denied due process because the charge, as stated in the Notice of Investigation, was vague and imprecise. We do not agree. This Board, in a number of decisions, has held that the purpose of the Notice of Investigation is to enable the employees to understand the scope of the investigation and prepare a defense. See, for instance, Award Nos. 365, 387, and 453. We find that the Notice given to Claimant provided sufficient specificity to meet that requirement.

The Organization also argues the Carrier's refusal to present the Medical Review Officer as a witness at the investigation was a denial of Claimant's due process rights. Again, we do not agree. In Award No. 364, this Board ruled that the Medical Review Officer's certification that the test was conducted in accordance with federal regulations constituted substantial evidence that he complied with all relevant regulations. His testimony, consequently, was not required by the Board in that case. We have reviewed Award No. 22 of Public Law Board No. 7529, cited by the Organization, and do not find that it imposes a requirement, as a condition of due process, to present the Medical Review Officer as a witness.

With regard to the merits, the Board's review of the record of the investigation reflects that there was substantial evidence to support the Carrier's charge against Claimant. It is evident that Claimant provided a substituted specimen, and any later offer by him to submit to another test is not relevant. As we found in Award No. 364, "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.” We upheld the discharge of the claimant therein, and we find no basis for any different result in the instant case. In reaching this conclusion, we have given consideration to all of the arguments advanced by the Organization and find them to be unpersuasive in this case.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member  
Ross Glorioso  
Employee Member  
John Nilon  
Carrier Member

Dated: 1/12/2022  
Arlington Heights, Illinois