

**PUBLIC LAW BOARD NO. 7163**

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

**vs.**

**NMB Case No. 511  
Award No. 511  
Organization No. D70134520  
Carrier No. 20-34772**

**CSX TRANSPORTATION, INC.**

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**STATEMENT OF CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. C. King, by letter dated December 27, 2019, in connection with allegations that he violated CSX Transportation Rule 104.2 and FMCSA 382.211 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File D70134520/20-34772 CSX).

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

‘For the reasons stated herein, it is respectfully requested that the discipline letter dated December 27, 2019 and all matter related thereto, We request that upon the expiration of the 9-month period on January 25, 2020 that CSX Transportation may permit Mr. King to return to regulated service under the conditions specified in 219.104(d).

Please advise this office when Mr. King will be returned to service with all seniority rights unimpaired and when request remedy will be made’ (Employees’ Exhibit ‘A-2’).”

**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 C.E. King (“Claimant”) on February 22, 1994. Claimant established and maintained seniority in the Carrier’s Maintenance of Way Department. During the time relevant for this dispute, the Claimant was working in the Bridge and Building (B&B) Department as a bridge mechanic. The Claimant had no proven past history of any discipline.

By letter dated May 2, 2019, the Carrier directed the Claimant to report for a formal investigation in connection with alleged insubordination for failure/refusal to provide an adequate urine sample when undergoing FMCSA certification urine toxicology testing on April 25, 2019, at Dothan, Alabama. After various postponements, the investigation was held on December 11, 2019.

Following the investigative hearing, the Carrier determined Claimant violated CSXT Operating Rule 104.2, and FMCSA 382.21, because Claimant refused to provide an adequate specimen for testing, in accordance with company policy and applicable federal regulations. Claimant was dismissed by letter dated December 27, 2019. The Organization appealed Claimant’s dismissal on January 13, 2020. By letter dated March 4, 2020, the Carrier denied the Organization’s appeal. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process. The parties were ultimately unable to resolve the dispute and the matter now comes before this Board for final adjudication.

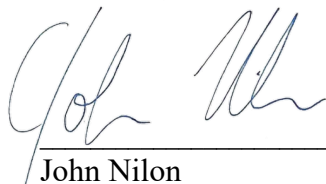
In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board finds substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant. The record evidence reflects that Claimant was “not clean” at the time of the test. Claimant believed that by refusing, he was admitting to the use of marijuana subjecting him to coverage by the Rule G Agreement. In consideration of the Claimant's lengthy employment history of twenty-five years with the Carrier and unblemished disciplinary record at the time of the offense, 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.

## **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.



Jeanne Charles  
Chairman and Neutral Member



John Nilon  
Carrier Member



Ross Glorioso  
Labor Member

Dated: 1-11-2023