

PUBLIC LAW BOARD NO. 7163

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
)	DIVISION - IBT RAIL CONFERENCE
)	
TO)	VS.
)	
DISPUTE)	CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Spears, by letter dated May 6, 2020, in connection with allegations that he failed his course of treatment as set forth in the Drug and Alcohol Rehabilitation/Education Program, his signed EAP-1 and as set forth in the Prevention Program Companion Agreement for refusal to provide a urine sample on May 4, 2020, was without a fair and impartial hearing (System File D602220/20-13657 CSX).
2. As a consequence of the violation referred to in Part 1 above, ‘... the Carrier must clear all mention of the matter from Mr. Spear’s personal record, immediately return Mr. Spear 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 healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline.’ (Employee’s Exhibit ‘A-3’).”

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 J.D. Spears (“Claimant”) on August 8, 2005. On October 3, 2019, pursuant to a Rule G violation, Claimant signed and agreed to the terms of a Rule G By-Pass agreement. Rule G governs the Carrier’s drug and alcohol policy. In the agreement, Claimant agreed to obtaining treatment and entering a follow-up program. The follow-up program required Claimant to submit to random drug testing for a period of up to sixty months. By the terms of the agreement, any violation would result in Claimant’s dismissal in all capacities without benefit of any further disciplinary investigations or hearings. Additionally, the agreement set forth the terms as it relates to a violation of the agreement. Specifically, it included the following provisions:

(f) If, at any time during the five (5) year period you fail to follow the course of treatment established by the counselor, the carrier shall remove you from the Program, and you agree to accept dismissal without the necessity of further disciplinary proceedings...

(i) You are subject to follow-up testing program as outlined in the Carrier FRA approved Drug and Alcohol Policy for a period of five (5) years.

(j) No claims shall be progressed by you or on your behalf on time lost as a result of your participation in the Program or as a dismissal pursuant to paragraphs "f" and "g" above.

Furthermore, the Carrier and the Organization had in place a Prevention Program Companion Agreement (“Agreement”) dated May 1, 2014, which states, in part:

9. If, at any time during the five (5) year period referred to in paragraph “2” above, the employee fails to follow the course of treatment established by the counselor, the Carrier shall remove the employee from the Program. If the employee has been returned to service, the Carrier shall, without the necessity of further disciplinary proceedings, also remove the employee from service and the employee shall revert to the status of a dismissed employee.

On May 4, 2019, Claimant was selected for an FRA follow-up toxicology test. When Claimant arrived at work, the Carrier alleges that he was advised he was going to be drug tested that day. According to the Carrier, Claimant left the workplace despite being told he was being drug tested on the day in question. Claimant disputes that he was informed he would be drug tested, but instead left because he was suffering from a migraine headache. Claimant's absence resulted in his failure to submit to drug testing as required by his course of treatment. Consequently, the Carrier determined Claimant violated CSX Transportation Operating Rule G and the terms of the By-Pass Agreement. By letter dated May 6, 2020, Claimant was dismissed.

The Organization appealed Claimant's dismissal by letter dated June 4, 2020. The appeal was denied by the Carrier on July 30, 2020. 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 is now 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. In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence *de novo*. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain the charge. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion.

This case boils down to whether Claimant refused to submit to a drug test. If there is substantial evidence of his refusal, then under the terms of the Rule G agreement, he has no recourse, and the dismissal must stand. However, if the evidence does not substantially support the refusal to submit claim, no violation by Claimant has been established and the dismissal must be overturned.

The Board does not find substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant. The evidence concerns opposing statements about whether Claimant knew he was going to be drug tested when he left the workplace. Claimant's supervisor, Lucas Suerdieck, provided an email statement that Claimant asked him who was being drug tested upon his arrival and Suerdieck replied that it would be Claimant. Claimant's version is that he was suffering from a migraine and when Suerdieck asked him if he was hydrated, he decided to use his established FMLA and leave. Employee Harold Scott who was also present, provided a statement confirming Claimant's version of the events. What is consistent between both

Suerdieck and Claimant's accounts is that no vehicle from the drug testing company was present in the parking lot. Thus, it is not clear why Claimant would be triggered to ask who was being drug tested. The Board finds that, on balance, the evidence that Claimant refused to be tested is questionable. Hence, there is insufficient evidence to substantiate the charge and end a 15-year career. By the same token, it was not appropriate for Claimant to simply leave the workplace without authorization. Accordingly, the relief sought by the Organization is sustained, in part. Claimant shall be reinstated subject to pre-employment clearance. However, no back pay is awarded, and the Rule G agreement shall resume upon Claimant's reinstatement from the date of his dismissal on May 6, 2020. The dismissal shall not remain on Claimant's personal record. The Carrier is ordered to make the Award effective on or before 30 days following the date the Award is transmitted to the parties.

AWARD

Claim sustained, in part and in accordance with the findings above.



Jeanne Charles
Chairman and Neutral Member



John Ingoldsby
Carrier Member



Ross Glorioso
Labor Member

Dated: December 19, 2023