

PUBLIC LAW BOARD NO. 7163

**CASE NO. 577
AWARD NO. 577**

Brotherhood of Maintenance of Way Employees Division)	
of the International Brotherhood of Teamsters)	
)	
and)	Arbitration Decision
)	and Award
CSX Transportation, Inc.)	
)	
Carrier File: 21-88062)	
BMWE File: DRA302021)	

I. STATEMENT OF THE CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. A. Watts, by letter dated June 28, 2021, in connection with allegations that he violated CSX Transportation Rules 104.3 and 106.3 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File DRA 302021/21-88062 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 losses suffered. The losses include, but are not limited to, any straight time, overtime, double-time, or other Carrier provided compensation lost as consequence of the discipline. It also includes healthcare, credit rating, investment, banking, mortgage/rent, or other financial loss suffered because of the discipline.’ (Employees’ Exhibit ‘A-2’).”

II. RELEVANT CONTRACT ARTICLES AND RULES

RULE 25 - DISCIPLINE, HEARINGS, AND APPEALS

Section 1 - Hearings

...

(c) An employee who is required to attend an Investigation and or make a statement prior to a hearing in connection with any matter which may eventuate in the application of discipline to any employee shall be offered the opportunity to contact his accredited union representative before a statement is reduced in writing. A copy of his statement, if reduced in writing and signed by him, shall be furnished to him and his union representative.

Section 3 - Appeal

(a) Appeal from discipline must be made, in writing, by the employee or on his behalf by his union representative to the carrier's Highest Labor Relations Officer within fifteen (15) days after receipt of written notice of discipline. This appeal, when the discipline imposed is suspension, shall act as a stay (except in the case of a major offense) in imposing the suspension until after the employee has been given a hearing.

(b) At a hearing on appeal, an employee may attend or be represented by his union representative.

(c) After the appeal has been acted upon, the employee or his union representative shall be advised not later than thirty (30) days after the hearing, in writing, of his decision. If the decision in cases of suspension is to the effect that suspension will be imposed, whether in whole or for a reduced period, the stay referred to in paragraph (a) shall be lifted and the suspension shall be imposed.

RULE 104.3 - EMPLOYEE BEHAVIOR

...

d. Carelessness, incompetence, or willful neglect of duties; or

e. Behavior that endangers life or property.

RULE 106.3 - DRUGS AND ALCOHOL

106.3 Employees are prohibited from possessing, using, or being under the influence of alcoholic beverages or intoxicants when:

a. Reporting for duty, or

b. On duty, or

c. On CSX property, or...

III. FACTS

The Claimant was a machine operator in the Carrier's Maintenance of Way Division. He primarily worked on anchor machines. On April 13, 2021, a team was assigned to a more remote area and stayed at a hotel. They were driven in a Carrier van to the job site in the morning. At approximately 12:15 am, the team first stopped at a store to buy supplies for the day.

At the store, the Claimant bought energy drinks, including six Red Bull and one NOS. He then went back into the store and bought two Bud Light beers. At the end of the work day, the

Team gathered at the grinding cart at the worksite. At least one coworker, C.D., heard the Claimant say to others to not step on his beer. C.D. saw that the Claimant's jacket was bundled up with what he believed to be beer and reported what he saw to an associate foreman the next day.

On April 14, in the early morning, Assistant General Foreman Derrick Waites brought information to System Production Manager Joe Gibson regarding what C.D. had reported about the Claimant. Shortly thereafter, Mr. Gibson approached C.D. and asked him what he had heard and seen. He asked C.D. to provide a written statement, which he did. He stated:

Yesterday, after we got done with the work, everyone was around the grinding cart and (Claimant) mentioned he had beer in his possession. I didn't know if he was joking or not, and then I saw his jacket bundled up with beer in it, approximately at 10:30 AM.

During the morning, Mr. Gibson talked to several of the Claimant's coworkers about what they heard and saw on April 13, 2021. Later that morning, Mr. Gibson approached the Claimant and asked him about what was reported by C.D. The Claimant denied that he bought beer at the store the prior day. Mr. Gibson then asked the Claimant to write a statement, which he did. This conversation occurred without an Organization representative present. The form on which the statement was written included language stating that employees may request a representative from the Organization before the statement is written. He stated:

Bought at store and left at gas station. Later picked up to put into my cooler. After work to have at hotel. Multiple witnesses. Chris Jathen, Chase Lawson, Nick Hurmius, Slade Arkim and Keith Brown.

After the Claimant provided his statement, Mr. Gibson approached several other employees and asked them to provide statements, which they did. Several stated that they believed that the Claimant had purchased beer and brought it to the worksite.

At the investigatory hearing, the Claimant acknowledged that the item referred to in his statement was the beer that he bought at the store on April 13, 2021, prior to leaving for the worksite in the Carrier's van. He acknowledged that he initially lied to Mr. Gibson when asked whether he bought the beer. However, he denied that he brought it into the van, stating that he

stored it outside near the store so he could pick it up on the way back from work. However, he also acknowledged that when he was at the worksite, he told a coworker not to sit on his beer.

The Claimant testified that he had a drinking problem and bought the beer impulsively. Ultimately, the Claimant admitted it was “irresponsible” to buy beer at the store and that he violated Rule 104.3 or 106.3.

While several Organization witnesses who had testified at the investigatory hearing confirmed their statements, they were equivocal about whether they actually saw the beer cans that they believed the Claimant had in his possession.

In a notice dated June 28, 2021, the Carrier informed the Claimant that there was substantial evidence that he violated the rules against possession of alcohol (Rule(s) 104.3 and 106.3) on April 13, 2021, and that he was being dismissed.

IV. POSITIONS OF THE PARTIES

Organization’s Position

The Organization argues that the Claimant did not have a fair and impartial hearing. It asserts that the witnesses at the investigatory hearing all said that they were not sure of what they saw in the bag or jacket, at the store, in the van, or on the machine on April 13, 2021. It also notes that the Carrier’s decision that he had alcohol on the property was based upon speculation, and that no one had seen the Claimant behave out of character or smelled anything out of the ordinary on him. It states that there was no urgency on the part of the Supervisor to get to the bottom of the situation because there was no situation.

The Organization argues that the Claimant was truthful in all of his statements, testimony, and answers to all questions. It explains that all of his coworkers stated that they would work with him again and that the Claimant holds no animosity towards any of them who spoke. The Organization highlights Mr. Gibson’s statement that the Claimant was a good

employee for CSX.

The Organization also argues that the Claimant was not afforded the opportunity of an Organization representative before writing a statement for the company official, in violation of Article 25(1)(c).

Carrier's Position

The Carrier argues that it had just cause to discharge the Claimant. It notes that the Claimant admitted he violated both Rules 104.3 and 106.3, and that he purchased beer. The Carrier argues that he got into the CSX van with the beer, and after the morning job briefing, asked two members of the team to hide his beer, which they refused to do. Later in the day, the Claimant told members of the team not to step on his beer. Based on those facts, the Carrier states that it proved the Claimant had beer in the CSX van, as well as on the tracks during the day.

The Carrier argues that the Claimant's statement that he left the beer outside at the store for 11 hours lacks common sense and is not credible. Further, in the end, the Claimant admitted that he violated the rules, had a problem, made a foolish mistake, and wanted a Rule G bypass.

The Carrier argues that the discharge of the Claimant was justified and in accordance with the Carrier's Defendant's Individual Development and Personal Accountability Policy ("IDPAP") His conduct rose to the level of a Major Offense and violations of Rule G (drug and alcohol policy) are dismissible offenses for a first offense, citing cases.

The Carrier also argues that the Claimant's conduct was careless, incompetent, and willfully neglectful. It cites his admission that he was dishonest in his oral statement to his manager that he did not buy beer, and was not forthright in his own testimony. The Carrier states that the Claimant can no longer be trusted by the Carrier.

V. DECISION

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing. We also find that the hearing was fair and impartial. The Claimant and his representative were given proper notice of the charges, sufficient time to prepare a defense, the opportunity to produce and examine evidence, the opportunity to present and cross-examine witnesses, and the opportunity to recess to confer with one another.

This Board finds that the Carrier disciplined the Claimant for just cause. The record establishes that the Claimant purchased beer and transported it in a CSX van to the job site on April 13, 2021. While the record does not establish that he consumed the beer at the job site, there is substantial evidence that he told employees at the job site that he was in possession of beer while they were there.

While the Claimant acknowledged that he bought beer on April 13, 2021, his testimony that he left it outside at the gas station is not credible. He was equivocal about what happened to it after work; he reported in emails that he bought Raze energy drinks and then testified that he bought Red Bull and NOS. His statement that everyone bought energy drinks, yet his coworkers must have been mistaken if they thought they saw beer, is not credible, since it is more likely than not that they would have recognized energy drinks, rather than beer, in his bag. Most of the witnesses were very sure they saw beer, as they indicated in their written statements. C.D. was unequivocal in his testimony that he heard the Claimant say that he had beer on the property, which prompted him to report this to the foreman. Finally, the Claimant lied to Mr. Gibbons when asked whether he bought beer at the store. While the Claimant's coworkers were less sure in their testimony than in their statements that the Claimant may have been carrying something other than beer, their initial statements were supported by the Claimant's testimony that he did, in fact, buy beer and the fact that he told employees at the job site that he had the beer. Based

upon the record as a whole, the Board finds that it is more likely than not that the Claimant brought the beer with him in the CSX van and kept it on the job site.


The Organization included two new arguments after the hearing in this matter was concluded. It argues that the Claimant was not allowed to have an Organization representative with whom to confer before he wrote his statement on April 14, 2021, explaining that the statement form clearly indicates at the top that an employee “shall be offered the opportunity to contact his accredited Organization representative before a statement is reduced in writing.” The Board finds that he was not directly offered an Organization representative, but the Claimant understood his right to do so because he contacted an Organization representative after he wrote the statement. The Board finds that the notification of employees’ right to contact a representative, as written on the standard statement form is sufficient to satisfy the Carrier’s obligation under Article 25 of the Agreement.

With respect to the level of discipline, the Board finds that the Carrier had just cause to discharge the Claimant and to do so without offering EAP services. At the time, he had been on the job for about one year. He knew the rules, yet he flagrantly violated them and lied to management when asked about his conduct.


VI. AWARD




The claim is DENIED.



Casey Summers
Organization Member



John Ingoldsby
Carrier Member



Sheila Mayberry, Chair and Neutral Member
December 13, 2024