

PUBLIC LAW BOARD NO. 7163

CASE NO. 595  
AWARD NO. 595

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: J.A. Medina

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STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Medina, by letter dated September 24, 2021, in connection with allegations that he violated CSX Transportation Rule FRA Part 219 and CSX OR106 was not pursuant to a fair and impartial hearing (System File DRA106221/21-57611 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Medina shall now be:

‘... made whole for all financial and benefit losses as a result of the violation. Any benefits lost, including vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:

- 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the claimant while wrongfully suspended);
- 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service;

3) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was suspended from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been suspended from service;

4) health, dental and vision care insurance premiums, deductibles and co-pays than (sic) he not have paid had not been unjustly suspended.

All notations of the dismissal suspension should be removed from all carrier records.””

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FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within meaning of the Railway Labor Act, as amended, this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and the parties were given due notice of the hearing held.

Claimant, J.A. Medina, tested positive for marijuana in an FRA random drug test on July 30, 2021. He was directed to report for a hearing into the positive drug test on August 11, 2021. The hearing was postponed to September 8, 2021, pending Claimant's consideration of a Rule G Bypass Waiver, which he declined.

Claimant did not attend the September 8 hearing. At the beginning of the hearing, his union representative stated that Claimant provided medical information from his physician to the Carrier's Medical Department explaining Claimant's inability to attend. The hearing officer recessed the hearing and contacted the Medical Department. The Medical Department indicated that it had received medical information that supported a continued absence but did not indicate Claimant was unable to attend the hearing. Without Claimant present, the union representative left. The hearing officer continued the hearing without Claimant present.

On September 24, 2021, the Carrier notified Claimant that he had violated CSX Transportation Rule FRA Part 219 and CSX Rule 106 and was dismissed from service.

The Organization argues that the Carrier's failure to postpone and reschedule the hearing deprived Claimant of his right to a fair and impartial investigation by depriving Claimant of the opportunity to testify on his own behalf and the opportunity to cross examine the Carrier's witnesses.

The Organization argues that the Carrier's refusal to postpone the September 8 hearing violated Rule 25, Section 1 of the Agreement. Rule 25 Section 1(a) provides: "Except as provided in Section 2 of this Rule, employees shall not be suspended nor dismissed from service without a fair and impartial hearing nor will an unfavorable mark be placed upon their discipline record without written notice thereof." Rule 25 Section 1(d) provides: "A hearing may be postponed for a valid reason for a reasonable period of time at the request of the Company, the employee, or the employee's union representative." The language of Rule 25 Section 1(d) is discretionary.

The record shows that Claimant contacted the Carrier's Medical Department prior to the September 8, 2021, hearing, providing the Carrier with medical documentation demonstrating that he had permanent restrictions of "no lifting, pulling, prolonged sitting/standing, no heavy work." While the restrictions supported a continued absence from work, the restrictions did not prevent Claimant from attending a hearing where he would be able to alternate from sitting to standing as needed.


Claimant's first hearing had been postponed while Claimant considered the Rule G Bypass Waiver, which he declined. The Carrier did not violate Rules 25 Section 1(d) by declining to postpone the second hearing based on the medical information provided.


As to the merits of the case, the Board finds that the Carrier had substantial evidence to support Claimant's dismissal for a positive random drug test result.

AWARD:

Claim is denied.

  
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Rachel Goedken  
Neutral Referee  
Dated: Feb 11 2025

  
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Casey Summers  
Employee Member

  
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John Ingoldsby  
Carrier Member