

## **PUBLIC LAW BOARD NO. 7163**

**CASE NO. 608  
AWARD NO. 608**

**Brotherhood of Maintenance of Way Employes Division ) of  
the International Brotherhood of Teamsters )  
and ) ) Arbitration Decision  
CSX Transportation, Inc. ) and Award  
Carrier File: 22-37737 )  
BMWE File: D 605021 )**

## I. STATEMENT OF THE CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. Pokorney, by letter October 18, 2021, in connection with allegations that he violated CSX Transportation Rules 104.2 and 104.3 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File D605021/ 22-37737 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. Pokorney's '... personal record 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.' (Employees' Exhibit 'A-2')."

3.

## II. FACTS

At the time of his discharge, the Claimant was a two-year employee with the Carrier. During a tour of duty, the Claimant had been staying at a Quality Inn in Defiance, Ohio, when on May 9, 2021, at about 21:00, the fire alarm in the Claimant's room engaged. He testified that a few minutes later, a hotel staff person came to the room. He testified as follows:

The time that it happened, it was around like 21:00 hours at night, and as I was getting ready for bed, the fire alarm went off. I'm pretty much freaking out at this point, because I don't know why a fire alarm went off. And within maybe 5, 10 minutes, the girl downstairs comes up to my room and doesn't know what to do at the time, because she was trying to turn it off at, I guess, at the front desk. She ran back downstairs. I waited, as the fire alarm is still going off. And as she comes back upstairs, she tells me that she doesn't, she doesn't know how to turn it off. She has no clue. And I was like, well, can I just dismantle it, so I can get some rest, or you know, or I didn't even think about getting another room or anything. I don't, I don't know about those rules, I mean, staying at the hotels. She told me to do what I had to do to get it to stop ringing. And I said, can, I can see through it a little bit. Can I just clip the wires so maybe it'll help shut it off? And she said, "Do what you go to do, because I can't fix it. I don't know what else to do." And that's why I proceeded to do what I did.

The next day, as a result of the incident, the hotel management told the Claimant that he was to pay \$200 for repairing the alarm system wiring in his room or he could no longer stay at the hotel. He then began to stay at another hotel.

On July 30, 2021, the Claimant's supervisor learned that the Claimant had been staying at another hotel. On August 2, 2021, when the Claimant returned to work from being on his rest days, the supervisor asked him why he was not staying at the Quality Inn. The Claimant explained what had happened, and he either had to pay \$200 to have the alarm fixed or stay elsewhere. He told the supervisor that he chose to stay at another hotel.

The supervisor began an investigation into the matter and took statements from the hotel management about what had happened. He also told the Claimant to pay the \$200 fee when he returned on August 8 and had him provide a written and signed statement about what occurred.

The supervisor did not verbally offer the opportunity for him to have a Union representative present; however, a statement on the templated form on which the Claimant wrote his statement indicated that a Union representative could be contacted. The supervisor also did not make a copy of his statement at that time, but the Claimant was told he could pick one up at the office.

The statement by the hotel management indicated that the Claimant was not given permission to cut the fire alarm wire and that by doing so, he potentially endangered himself, his co-worker in another room, and possibly other hotel guests if there was a fire.

On Monday, August 9th, the supervisor asked the Claimant if he had paid the \$200 that was owed to the hotel and if he was staying there. The Claimant told him that he had paid it. The supervisor subsequently learned that as of August 11th, the Claimant had not paid the fee. Later that day, the Claimant withdrew cash from his bank and paid \$200 to the hotel.

On October 18, 2021, the Claimant was advised by letter that he was dismissed from the Carrier for violating Operating Rules 104.2 and 104.3.

### **III. POSITIONS OF THE PARTIES**

#### Organization's Position

##### **Due Process**

The Organization argues that the Carrier violated Rule 25, Section 1(c) when it failed to give the Claimant the opportunity to contact his Union representative prior to reducing his statement into writing, and when it failed to provide the Claimant and his Union with representative with a copy of the signed statement.

It asserts that the Claimant was never informed of his right to contact his Union representative before writing his statement and, despite requesting a copy of it, the Carrier never

provided him with it. The Organization states that the failure to comply with Rule 25 constitutes a direct violation of the Claimant's due process rights to a fair and impartial hearing and that the Carrier had an "affirmative" obligation to allow him to have access to his Union representation prior to giving a written statement.

The Organization asserts that the Carrier's contention that the Claimant was not prevented from contacting a Union representative disregards the Carrier's affirmative obligation under Rule 25 to offer the opportunity. It claims by not doing so, the Claimant was denied his contractual due process right to a fair and impartial hearing.

## **The Merits**

The Organization argues that the Carrier failed to meet its burden of proving by substantial evidence that Claimant violated CSX Operating Rules 104.2 (dishonesty) or 104.3 (carelessness/endangerment).

The Organization contends that the Carrier's allegation of dishonesty relies on the Claimant's written statement dated August 11, 2021, wherein he stated, "I paid the bill at the hotel of \$200," despite not having done so at the time of writing. The Organization cites the Claimant's testimony that it was his intent to pay the bill later that day, which he did. The Organization asserts that the Claimant never exhibited a willful intent to deceive the Carrier.

In connection with Rule 104.3, the Organization contends that the record does not support the Carrier's allegation that the Claimant was careless or exhibited behavior that endangered others by cutting the smoke alarm wires. It cites the Claimant's testimony that he acted at the direction of a hotel employee to disable the malfunctioning alarm to mitigate the disturbance. While the hotel manager disputed this, her account relies on secondhand descriptions from a hotel employee and fails to address the Claimant's testimony that he received permission.

The Organization also states that the Carrier's assertion that Claimant "endangered life or property" by disabling the alarm is speculative and unproven. It claims that there is no evidence that the Claimant knew the alarm system was part of a "3-room loop" system, or that his actions created an immediate risk.

### Carrier's Position

#### **Due Process**

The Carrier argues that the Union did not present evidence to substantiate its allegation that Claimant's due process rights were violated. It asserts that the Claimant was put on notice to the matter being investigated; was provided an opportunity to appear; and to challenge the evidence and testimony presented.

The Carrier also argues that it never prevented the Claimant from contacting his Union representative before writing his statement and never picked up a copy of it after he was informed it was available to do so.

The Carrier also argues that it was within its discretion to hold the Claimant from service following a preliminary investigation, due to its concern that keeping him in service would pose a hazard to himself or others. Further, it contends that there was no showing that he suffered any detriment due to the conduct of the Carrier.

#### **The Merits**

The Carrier argues that the facts of what occurred are not in dispute. The Claimant admitted he cut the wires to the smoke alarm system in his room at the hotel and refused to pay for the damages as directed by his supervisor. It asserts that the Claimant, an employee for over two years at the time of this incident, was familiar with the rules and procedures and knew, or should have known, the expectations as an employee to be honest and comply with the rules

regarding his conduct. It asserts that substantial evidence established that he violated CSXT Rules 104.2 and 104.3.

Claimant's dismissal was appropriate and in accordance with the Carrier's IDPAP as he committed a Major Offense of lying and damaging company property - major/dismissible offenses. His behavior endangered his life, his co-worker's life, and the lives of others who were staying at the hotel. The Claimant chose not to adhere to Carrier's Operating Rules.

#### **IV. DECISION**

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 the Agreement dated March 20, 2008; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing held.

The Board finds that the Claimant was not deprived of his due process rights based upon the language of the Carrier's templated form, on which it clearly stated that he had the right to contact his union representative. The Claimant was also given notice of his appeal rights and took advantage of it by having the Organization appeal his discharge.

The Board finds that, with respect to the merits of the appeal, the Claimant knew or should have known that he was damaging the hotel's smoke alarm system, whether or not he received permission to do it. He put himself, his co-worker, and others in the hotel in danger if there had been a real fire emergency. The Board further finds that, while the Claimant eventually paid the \$200 in damages to the hotel, he did so after he informed the Carrier that he had already paid the fee, to which he admitted that he was dishonest in his statement. Based upon the above, the Board finds that there was just cause to discipline the Claimant.

The Board further finds that there was just cause to discharge the Claimant since the violations of Rules 104.2 and 104.3 were major offenses.

## V. AWARD

The claim is Denied.



Casey Summers  
Organization Member



John Ingoldsby  
Carrier Member



Sheila Mayberry, Chair and Neutral Member  
November 3, 2025