

PUBLIC LAW BOARD NO. 7529

Case No. 126

PARTIES
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File No. D10904116

VS.

CSX Transportation, Inc.
Carrier File: 2016-203411

Arbitrator: Sherwood Malamud

FINDINGS

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.

Under date of March 8, 2016, Claimant A.W. Eagen signed an attachment A expedited discipline handling form. Through this document, Claimant Eagen elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

The Carrier hired A.W. Eagen on August 8, 2005. He held a Bridge Inspector classification at the time of his dismissal effective March 9, 2016.

After four postponements, an investigatory hearing was held on February 18, 2016. Claimant failed to appear. The Organization's representative attempted to contact Claimant on February 18. When he failed to do so, he objected to proceeding any further. The Representative argued it denied Claimant of a fair hearing. Nonetheless, the Carrier's Hearing Officer proceeded with the hearing after Assistant Division Engineer Hoopingarner attempted to call Claimant. Hoopingarner did so on the record. The Hearing Officer then provided Claimant with the time and opportunity to call Hoopingarner's phone. Claimant failed to contact the Assistant Division Engineer or the Organization's representative during balance of the hearing.

On the evening of September 25, 2015, Claimant was involved in a single vehicle at fault accident in his company vehicle on I-65 Northbound at mile marker 224. Claimant was off duty at the time of the accident. Assistant Division Engineer Hoopingarner testified at the investigatory hearing and he submitted photos of prescription medications labeled "may cause drowsiness" that he observed in the vehicle cup holder console that separates the two front seats.

General Safety Rules GS-2 Substance Abuse provides:

Employees reporting for duty, on duty, on CSXT property or occupying facilities provided by CSXT are prohibited from having in their possession, using, or being under the influence of alcoholic beverages or intoxicants.

Employees shall neither report for duty nor perform service while under the influence of, nor use while on duty or on CSXT property, any drug, medication or other substance, including prescribed medication that will in any way adversely affect the employees alertness, coordination, reaction, response or safety.

After the accident Claimant was transported to a hospital where the Company arranged for the administration of a reasonable suspicion test for alcohol and drugs. The result of that test was not placed in the record.

In his statement, Claimant explained that he over corrected and he went into ditch on right side of the road. During ADE Hoopingartner's investigation at the site of the accident, he observed skid marks from the passing lane across the right lane into the ditch. After his review of the transcript and Exhibits, Division Engineer Purl determined that dismissal was the appropriate penalty, in this case.

During the Board's deliberations, both the Carrier and Organization stood on the record.

BOARD FINDINGS

The Organization maintains that the notification letter was inadequate. It failed to alert Claimant of the rules he allegedly violated. The Organization objects to the October 9, 2015 notification letter. The letter failed to specify the rules allegedly violated by Claimant's conduct. This Board determined in Awards 106 (MacDougall) and 114 (Malamud); NRAB Third Division Award No. 35022, BMW v. BNSF (Kenis) that it was not necessary to specify the Rules allegedly violated. Under Rule 25, the Carrier had to provide sufficient information to alert Claimant of the conduct that is the subject of the investigation. The Carrier did so in the October 9, 2015 letter.

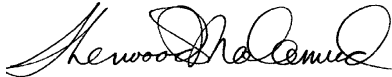
The Organization claimed in its written argument that the Carrier failed to meet its burden of proof. The Board, after careful review of the record made at the on-property investigatory hearing, concludes that the record supports a finding that Claimant violated Safety Rule GS-2. Claimant had prescription medicines in his possession in a company vehicle while operating that vehicle. He overcorrected and steered the company vehicle into a ditch. The record evidence is insufficient to establish that Claimant was under the influence of drugs or alcohol at the time of the accident.

In Case 125, the Board sustained the Carrier's dismissal of Claimant for abusing the use of his Corporate Lodging Card over the period of May through August 2015. The Carrier dismissed Claimant for the at fault accident in September 2015. It is the subject of this appeal.

The record clearly supports a finding that Claimant violated Safety Rule GS -2. There is nothing in this record that provides a basis for setting aside or mitigating the penalty imposed in Case 125.

AWARD

Claim denied.

A handwritten signature in cursive script, appearing to read "Sherwood Malamud".

Sherwood Malamud
Neutral Member
Date: November 3, 2017