

PUBLIC LAW BOARD NO. 7529

Case No. 144

PARTIES  
TO THE DISPUTE

Brotherhood of Maintenance of Way Employees  
Division of the International Brotherhood of Teamsters  
System File: D26322116

VS.

CSX Transportation, Inc.  
Carrier File: 2017-215549

Referee: Sherwood Malamud

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**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, and that the parties were given due notice of the hearing.

By letter dated December 23, 2016, Claimant, Machine Operator G. B. Mayle requested that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

**FACTS**

The Carrier hired Claimant G. B. Mayle on September 18, 2000. By letter dated October 19, 2016, Assistant Division Engineer M.C. McLain directed Claimant to attend an investigatory hearing that eventually was held on November 29, 2016 to address whether Claimant disabled and damaged the smoke detectors in his motel room in the Best Western in Marion, Ohio between September 26 and October 12, 2016, and was quarrelsome with staff.

At the hearing, the Carrier charged that Claimant violated Rule 104.2 and 104.3, which provide:

Rule 104.2

CSX employee behavior must be courteous and must not be . . .

d. Quarrelsome

Rule 104.3

The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities provided by CSX:

d. Behavior that endangers life or property.

Claimant had two stays at the Best Western in Marion Ohio between September 26 and October 12, 2016. On both occasions his vaping set off the motel's smoke alarms. During his first stay, he unplugged the alarm.

The record evidence concerning the second stay reflects the following. He checked into the Best Western in Marion Ohio for a stay from October 9 through October 13, 2016. The smoke alarm in Claimant's room sounded on October 12. By law, the motel must contact the police. Consequently, a police report of the incident was generated and is part of the record at the on property hearing. If a guest disables a smoke alarm it trips an alarm at the motel main panel. The front desk personnel alert motel maintenance, who go to the room to investigate.

Claimant admitted to unplugging the alarm system once it went off. He testified he did so to limit the disturbance for other guests. The Board concludes this describes Claimant's conduct during one of the two stays. During the other stay, Claimant disconnected the wires in the smoke alarm. The Motel maintenance man described the condition of the smoke alarm immediately after Claimant's stay.

The Carrier had front desk and maintenance personnel testify at the investigation. The smoke alarm went off in Claimant's room. When the front desk clerk went to Claimant's room after the smoke alarm sounded, Claimant told the clerk that he was vaping. Claimant testified to his belief that vaping is not smoking. He told the clerk he would air out the room. After the alarm went off, motel staff told Claimant not to vape. When Claimant was told not to vape, he refrained from doing so for the balance of the night.<sup>1</sup>

By letter dated December 16, 2016, Great Lakes Division Engineer Hess informed Claimant that after reviewing the record developed at the November 29, 2016 hearing, it was his decision to assess dismissal as the penalty for his conduct at the motel as described above.

### **The Carrier Argument**

The Carrier argues that Claimant received a fair hearing. The Organization request for information was sent to the wrong address. The Organization is not entitled to pre-hearing discovery.

The evidence establishes that Claimant was vaping in his room. He signed the notice provided by the motel that it is a smoke free facility. Claimant admitted he unplugged the smoke

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Claimant has a medical condition that the Board makes no reference to in the interest of Claimant's privacy. Claimant paid \$250 for damage to the motel. The record does not indicate whether that is related to the medical condition or to vaping. The medical condition does not form a basis for the charge or disciplinary action taken by the Carrier, nor was it considered by the Board in its consideration of this appeal.



alarm on one occasion. The charging Carrier official alleged that unplugging the smoke alarm endangered both Claimant and other guests.

The maintenance employee who testified indicated that Claimant had tampered with the smoke alarms during his two stays. The second time, Claimant removed the wires from the smoke alarm unit.

Claimant admitted he signed the notice provided by the motel concerning their no smoking policy, but he did not read it. He just signed it to check-in. A claim of ignorance is not a defense, PLB 4998 Award No. 26 (Van Wart), [cited but not included in the submission]. The Carrier asserts it met its burden of proof by substantial evidence. Since this is Claimant's second major offense in one year, dismissal is the appropriate penalty.

### **Board Findings**

The Organization stood on the record in argument at the Board.

The Board has carefully reviewed the entire record. We find that Claimant was afforded his contractual due process rights under Rule 25. The request for information was misdirected to the wrong address.

Claimant signed the no smoking notice provided by the motel at check-in. On the first occasion, he may well have treated it as a perfunctory matter. However, Claimant stayed at this motel on two occasions over a three week period. By the second stay, he was on notice that the motel had a no smoking policy, and that vaping would set off the smoke alarm. Nonetheless, he vaped in his room and set off the alarm. This evidence does not support Claimant's defense that this is a case of a misunderstanding.

The record contains the motel maintenance man's testimony. He found in Claimant's room the smoke alarm's wires were disconnected. Disassembling a fire alarm places Claimant, the motel's other guests and staff in danger. It reflects an intent to vape, undisturbed by the alarm. The Carrier views disconnecting a smoke alarm as an act that endangers the life of Claimant and other guests and staff of the motel. The Carrier has met its burden to establish a violation of Rule 104.3.

The Carrier did not establish that Claimant acted in a quarrelsome manner with motel staff in violation of Rule 104.2.

This is Claimant's second major offense, this one on October 13, 2016 and one on December 1, 2015 in a one year period. The Carrier cites several cases in which Carrier personnel have been dismissed for unbecoming conduct at a CLC facility, NRAB Third Division Award No. 32853 (Perkovich); NRAB Third Division Award No. 34221 (Margo Newman); PLB No. 7529 Award No. 4 (Miller).

The Carrier has overcharged Claimant with a Rule violation that it was not able to prove,

Rule 104.2 d. Quarrelsome. However, the Carrier established that Claimant disconnected a smoke alarm on October 12, 2016, a dangerous act. This constitutes Claimant's second major offense. The Carrier has established that dismissal is an appropriate penalty for the violation established by this record.

**AWARD**

Claim denied.

A handwritten signature in black ink, appearing to read 'Shervod Malamud', is written over a horizontal line.

Shervod Malamud

Neutral Member

Date: 2/27/2018