

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
Division of the International Brotherhood of Teamsters

-and-

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

"In accordance with the provisions of Rule 25, Section 3 of the June 1, 1999 Agreement, the following will serve as our appeal of discipline assessed to BMW employee W.H. Cameron, as a result of the hearing held on April 18, 2006 at Thomasville, GA.

For the reasons stated, plus the objections raised at the hearing, the charge letter and all matter relative thereto should be removed from Mr. Cameron's personal record, Mr. Cameron should be immediately returned to service and be made whole for all losses suffered."

OPINION OF BOARD:

W.H. Cameron ("Claimant") has been employed in Carrier's Engineering Department since August 1977. At the time this issue arose, Claimant was a Machine Operator on System Production Gang ("SPG") 5XT1 headquartered in the Biloxi, Mississippi area. Of note, due to the gang's mobile force status, the Carrier provides the employees transport to and from the appointed worksite, via bus, to the company provided lodging facility.

At the end of the workday on February 1, 2006, Claimant Cameron boarded the bus and took a seat next to co-worker B.R. ("Rabbit") Wallace. Notably, this was not the Claimant's "usual" seat, but for some personal reason, he chose to sit next to Wallace even though there were numerous open seats elsewhere. The record persuasively establishes that from the time the Claimant sat next to Mr.

Wallace, until very shortly before their arrival at the Carrier provided lodging, the Claimant made "every effort" to instigate an argument with Mr. Wallace. The record shows that Mr. Wallace, who was cleaning his fingernails with a small pocket knife, repeatedly asked the Claimant to leave him alone, finally exclaiming: "Shut up and leave me alone." However, Wallace's plea fell on deaf ears and the Claimant continued to taunt him. Finally, Wallace stood up to get away from the Claimant, but while doing so, he brandished his knife and said, in words or substance: "Leave me alone or I will cut you with this knife". As Wallace moved out of the seat, the Claimant made a grab for Wallace's wrists; in the process of which he sustained a cut to his hand.

It is not disputed that all of those on board the bus were "aware" of the altercation and the resulting injury, but no one reported it officially. Shortly after the bus arrived at the motel, Messrs. Cameron and Wallace chose to "handle the situation" themselves, sans involvement of Carrier officials. Although neither employee contacted their supervisor, Manager System Production J. Crutchfield somehow became aware of the altercation and contacted each of the involved employees regarding the matter. However, both the Claimant and Mr. Wallace declined to file a report, stating that "the injury did not occur during working hours".

The record demonstrates that Carrier officials did not become "completely aware" of the February 1 incident until February 16 when an anonymous caller contacted Carrier's ethics hotline to report the incident. Shortly thereafter, CSXT Railroad Police began an investigation and determined that the incident occurred on the CSXT bus, en route to the Carrier provided lodging facility. At the completion of the police investigation on March 2, 2006, the Claimant was instructed by letter dated March 7, 2006 to attend a formal investigation regarding the following charges: "Conduct unbecoming an employee of CSX Transportation, dishonesty, concealing facts under

investigation, making false statements concerning matters under investigation and harassment. Your actions in connection with this matter appear to be in possible violation of, but not necessarily limited to, CSX Transportation Operating Rules GR-2 and GR-3A, CSX Safe Way-General Safety Rule GS-1, as well as CSXT's Policy on Workplace Violence."

Following two (2) postponements at Carrier's request, the hearing was held on April 18, 2006, with both the Claimant and his representative in attendance. Thereafter, in a letter dated May 4, 2006 the Claimant was informed that he had been found guilty as charged, and was dismissed from Carrier's service. In a letter dated May 17, 2006 the Organization appealed Carrier's decision maintaining that the Carrier failed to charge the employee within the thirty (30) day time limit set forth in Rule 25 Section (1) (d). Specifically, the General Chairman noted that Carrier management knew the incident occurred on February 1, 2006, and was therefore barred from pursuing charges at "such a late stage". With regard to the merits of the dispute, the Organization contended that: "It is the Organization's contention that the Carrier set the stage for a problem when it issued knives to all members of the gang. In irony, Mr. Cameron, who advised the supervisor at the overlap meeting against the notion of issuing knives rather than jackets or coats, fail [sic] victim to one of those Carrier-issued knives."

In its denial of the appeal, Carrier asserted that it did not gain "constructive knowledge" of the February 1, 2006 altercation until the internal investigation concluded on February 21, 2006, thereby rendering the Organization's time limit argument moot. With regard to the merits of the dispute, the Carrier asserts that it proved its case with substantial evidence, pointing to the testimony supporting Mr. Wallace's allegation that Mr. Cameron "continually agitated him into an altercation".

At the outset the Organization contended that Carrier did not file the charges against the

Claimant in accordance with Rule 25 (1)(d) of the Agreement. However, the record supports Carrier's argument that it did not have "constructive knowledge" of the February 1, 2006 altercation until the investigation of the incident was complete and the facts revealed on February 16, 2006. Therefore, the Organization's assertion in that regard is without merit.

Turning to the merits of this dispute, the Claimant maintained, throughout the proceedings, that he was completely innocent of the charges, regardless of his co-workers uncontested testimony to the contrary. On the other hand, those who were present on the bus on February 1 and were in a position to observe the altercation, stated without equivocation that the Claimant was the aggressor. At the outset, it was noted that the Claimant boarded the bus and sat next to Mr. Wallace although there was a number of empty seats available, and that location was not the Claimant's "normal" seat on the bus. The Claimant's co-workers further testified that the Claimant goaded Mr. Wallace by telling him he needed to get "some store bought teeth". The Claimant also told Mr. Wallace, who had provided donuts for the gang that day, that he was going to tell the employees that Mr. Wallace had "poisoned" the donuts in an effort to make them ill. In response to the Claimant's goading, the employees who testified stated that they heard Mr. Wallace tell the Claimant to "shut up and leave me alone", showing "no interest" in arguing with the Claimant.

The Claimant asserts that there was "no argument" between he and Mr. Wallace on February 1, or at any other time, and that he sat next to Wallace because he thought Wallace appeared to be "upset and sad". According to the Claimant, he was simply "making conversation" with his co-worker in an effort to "cheer him up". The Claimant further asserted that Mr. Wallace "stood up and pulled the large knife out of his pocket and threatened to "kill somebody". The Claimant further testified that after threatening to "kill somebody" Wallace "swung the knife at him" and cut

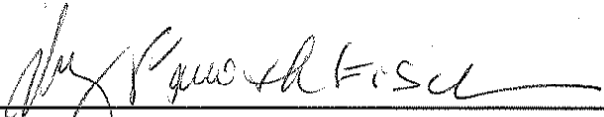
him "without provocation".

However, the disinterested eyewitness testimony does not support the Claimant's account of the February 1 altercation. After "relentlessly goading" his co-worker, the Claimant pushed Wallace against the side of the bus pinning Mr. Wallace's wrists. In doing so, the Claimant "cut his own hand", according to the eyewitnesses on the bus. In these circumstances, there is no doubt that the Claimant, who has been known to be "argumentative and aggressive" throughout his tenure with the Carrier, was the instigator of the February 1, 2006 altercation. The record demonstrates that Mr. Wallace, who avoided the Claimant whenever possible, did all that he could to avoid the incident. Further, there is no evidence on this record which convinces us that the injury the Claimant sustained was self-induced when he grabbed Mr. Wallace's wrists in an effort to restrain him. We conclude that the Carrier adduced more than sufficient evidence to support its charges and that the penalty was not excessive given the Claimant's culpability and prior record.

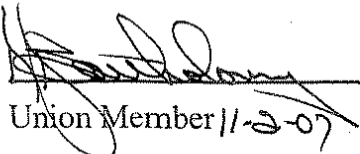
Premised upon all of the foregoing, this claim must be denied.

AWARD


Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 11-2-07



Company Member