

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 B.R. Wallace, as a result of the hearing held April 19, 2006 at Thomasville, GA.

The charge letter and all matter relative thereto should be removed from Mr. Wallace’s personal record file and Mr. Wallace should be immediately returned to the service and be made whole for all losses suffered.”

OPINION OF BOARD:

B.R. (“Rabbit”) Wallace (hereinafter referred to as “Claimant”) has been employed by Carrier since June 1977. At all times relevant to this dispute, the Claimant was assigned to the position of Machine Operator “A” on a System Production Gang (“SPG”) working in and around Biloxi, Mississippi. The team was staying in a company provided lodging facility and would be transported via bus to and from the work sites, a fact pertinent to this dispute.

At the end of the workday on February 1, 2006, Mr. Cameron boarded the bus and took a seat next to co-worker “Rabbit” Wallace. Notably, this was not Cameron’s “usual” seat, but for reasons not fully developed on the record, he chose to sit immediately next to Wallace, despite numerous open seats elsewhere. Of note, and pertinent to this dispute, the Claimant was cleaning his

fingernails with a small pocket knife when Cameron sat down next to him. The record persuasively establishes that, from the time Cameron sat next to Mr. Wallace, until very shortly before their arrival at Carrier provided lodging, Cameron made "every effort" to instigate an argument with Mr. Wallace. The record shows that Claimant Wallace, who did not respond to Cameron's verbal taunts, repeatedly asked Cameron to leave him alone; finally exclaiming: "Shut up and leave me alone".

When Cameron continued to harass him, the Claimant stood up to get away from Cameron's taunting. As he was moving away, however, he brandished the pocket knife with which he had been cleaning his fingernails, while stating, in words or substance: "If you don't leave me alone, I will cut you with this knife". As the Claimant attempted to move out of his seat, Cameron grabbed him by his wrists and attempted to pin Wallace against the window; but while doing so, Cameron cut his hand on Wallace's pocket knife. It is not disputed that all of those on board the bus were aware of the altercation and the resulting injury. When the bus arrived at the motel, Messrs. Cameron and Wallace chose to "handle the situation themselves" and neither employee reported the incident to their supervisor.

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 details of the incident. Shortly thereafter, CSXT Railroad Police began an investigation and determined that the incident occurred on the CSXT bus, en route to Carrier provided lodging. 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 Safeway General Safety Rule GS-1, as well as CSXT's Policy on Workplace Violence".

The Organization asserts that because a Carrier supervisor had knowledge of the incident on February 1, 2006, the charges relating to same were not filed in a timely manner. However, after a careful review of the record, we concur with Carrier's contention that it did not have actual knowledge of the altercation until February 16, 2006, the date upon which Carrier Police completed their investigation. Therefore, we find those procedural arguments to be without merit.

Turning to the merits of the dispute, there is no room for debate on this record that Mr. Cameron instigated the incident by "relentlessly" goading the Claimant. Although Mr. Cameron contends that he was simply "making conversation" with the Claimant, the record demonstrates otherwise. Each of the eyewitnesses to the incident testified that the Claimant "went out of his way" to avoid Cameron, however, his efforts were to no avail. All of those who were present, except Cameron, stated that the Claimant had his pocket knife out before he boarded the bus, that he was simply cleaning his fingernails and that he made no threatening gestures or statements.

Specifically, those who observed the incident testified that the Claimant repeatedly asked co-worker Cameron to "shut up and leave me alone", and that the only "threat" anyone heard was the Claimant telling Cameron that if he didn't leave him alone, he would "call Jacksonville" on him. Although the Carrier cannot and does not condone its employees engaging in such behavior, it is clear that the incident which occurred on February 1, 2006 was instigated by Mr. Cameron, and his hand injury came as a result of his own doing. Specifically, the injury occurred when Cameron

grabbed the Claimant by his wrists while he was holding his pocket knife, thereby literally cutting his own hand. In that connection, according to undisputed testimony, Cameron, who is over six (6) feet tall and by his own admission, weighs approximately 220 pounds, could hardly have felt threatened by the Claimant who is approximately five feet four inches (5' 4") and weighs only 145 pounds. In short, Cameron's "self defense" is not credible.

Finally, the record demonstrates that the Claimant enjoys a heretofore unblemished record, while the same cannot be said of Mr. Cameron. In fact, the record demonstrates that the Claimant's co-workers avoided Cameron due to his argumentative, bullying and aggressive behavior. Claimant Wallace cannot be considered blameless, however, because even though he was in the process of retreating from an altercation he nonetheless brandished the knife and made a provocative threat which contributed to the escalation of this incident from a verbal argument to a physical confrontation. Nor can it go unremarked that the Claimant violated Carrier rules regarding timely and accurate reporting of injuries incurred or inflicted while on Carrier facilities and time.

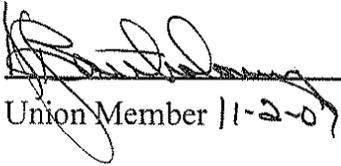
Based on all of the surrounding circumstances, however, including the Claimant's repeated efforts to avoid Cameron's aggressive behavior and his long-standing unblemished personal record, we find that the discipline of dismissal must be modified. Therefore, Carrier is directed to return the Claimant to service, without back pay, but with all seniority rights and other benefits unimpaired.

AWARD

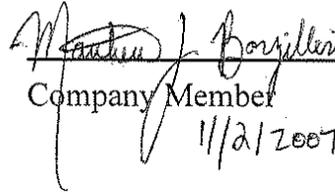
Claim sustained to the extent indicated in the Opinion.



Nancy Faircloth Eischen, Chair



Union Member 11-2-07



Company Member
11/21/2007