

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION AFFILIATED WITH THE
TEAMSTERS RAIL CONFERENCE

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

This letter is concerning the Investigation that was held on J.R. Castle ID#*****, which was held on February 1, 2006, at Bryan Park in Richmond, VA in which he was dismissed.

There was no charge to Mr. Smith even [sic] he violated the same rules Mr. Castle was charged with. No witnesses were provided and we were not able to cross-examine even though the Carrier states there were witnesses and they had statements. The discipline of dismal [sic] is extreme do [sic] to Mr. Castle medical problems and past work record. Mr. Castle should be made whole for this loss of work.....

OPINION OF THE BOARD:

J. R. Castle (hereinafter referred to as "Claimant" or "Castle") was hired by the former Baltimore and Ohio (B&O) Railroad Company (a CSXT predecessor property) on April 26, 1974 in the Engineering Department. At all times relevant to this issue, the Claimant was assigned as a Machine Operator on 5GCT System CAT Team ("Team"). On June 20, 2005, the day this dispute arose, the Team was working in the vicinity of Covington, VA. While en route to the Carrier provided lodging facility, the Best Western Inn in Covington, VA, the Claimant became involved in a verbal altercation with Team colleague Machine Operator J.P. Smith. The record demonstrates

that the two began arguing about the work they engaged in during the workday, with the Claimant alleging that Mr. Smith “did not allow” the Claimant to “safely operate” his equipment. While on the bus the verbal altercation became “very heated”, including the use of profanities, and the duo continued to argue after departing the company provided bus. Shortly after departing the vehicle, the Claimant struck Mr. Smith across the face, causing severe personal injury to Mr. Smith. (Of note, at the time of this writing, Mr. Smith is still unable to work due specifically to the injury inflicted by the Claimant). Subsequent to the physical assault, the Manager of the Best Western came out to the parking lot to stop the altercation.

As a result of the incident, in a letter dated July 8, 2005, the Claimant was instructed to attend a July 18, 2005 formal investigation regarding the following charges:

The purpose of this formal investigation is to ascertain the facts and determine your responsibility, if any, in connection with a verbal altercation that occurred on the 5GCT system CAT team on June 20, 2005, while the team [was] (sic) tramming on the James River Subdivision. At approximately 1620 hours at the Best Western Motel at Covington, VA you allegedly physically assaulted and caused injury to employee J. P. Smith. Accordingly, you are charged with conduct unbecoming an employee in violation with, but not limited to CSX Operating Rule GR-2.

Following one postponement at the Organization’s request the investigation was convened, and completed, on February 1, 2006, with the Claimant and his BMW representatives in attendance. Thereafter, in a letter dated February 17, Carrier informed the Claimant that he had been found guilty as charged and dismissed from the service of CSXT, in all capacities.

The Organization’s Vice Chairman, L. Buckley appealed the discipline in a letter dated February 24, 2006. Specifically, the Vice Chairman alleged that Carrier failed to prove its case because the Claimant was “unduly provoked” by fellow employee Smith, and therefore, the charges and discipline were not justified. In a August 9, 2006 declination of the claim, Carrier’s Director

Labor Relations J. Wilson confirmed the parties' conference, held July 11 and 12, 2006, and denied the Organization's request for leniency, stating unequivocally that: "*leniency would not be extended*". Mr. Wilson went on to assert that the Claimant's due process rights (as provided under Rule 25 - Discipline) were "fully protected". Mr. Wilson went on to note that: "*Carrier satisfied its burden of proof when Claimant Castle admitted his guilt during his testimony*". Mr. Wilson further argued: "*It was brought out in the investigation that the other employee involved in the altercation, Mr. J. Smith, was injured during the physical attack by Mr. Castle. Manager Program Construction S. Piccirillo testified that Mr. Smith received medical care as a result of the incident, and to date, had not yet returned to work...*". Finally, Mr. Wilson contended that the Carrier satisfied its burden of proof due to the Claimant's admission of guilt during his testimony at the investigation.

Despite continued attempts to resolve the dispute, the Parties were unable to do so. Therefore, the matter has been placed before this Board for final, binding adjudication.

Following careful review of the record, the Board concludes that all necessary due process was afforded to Mr. Castle. Specifically, the record demonstrates that the Claimant was given timely notice of the charge(s), afforded a full and fair hearing, ample time to prepare a defense, and the opportunity to produce all of the witnesses and evidence.

Turning to the merits of the issue, it is not disputed that following the June 20, 2005 workday, while on their way to Carrier provided lodging, the Claimant and Machine Operator Smith engaged in a verbal altercation premised upon the Claimant's assertion that Smith was not allowing him to "work safely". The verbal exchange continued throughout the ride to the Best Western in Covington, with both Mr. Smith and the Claimant "holding their own". However, upon arriving at

the Best Western, the Claimant upped the stakes by striking his co-worker with such force that Mr. Smith has to date, been unable to return to service.

In that connection, the Claimant admitted his guilt during the following interchange:

Q. It is your testimony that you did strike Mr. Smith?

A. Yes sir.

Q. Mr. Castle, are you familiar with the operating rules?

A. Yes sir.

Q. Are you familiar with Operating Rule GR-2?

A. Yes, sir.

Q. Did you violate Operating Rule GR-2?

A. Yes, I did.

Q. Mr. Castle, you are charged with conduct unbecoming an employee. Was your behavior on June 20th consistent with conduct unbecoming an employee?

A. Yes, it was.

Q. Mr. Castle, were Mr. Smith's actions on June 20th sufficient to constitute striking that employee?

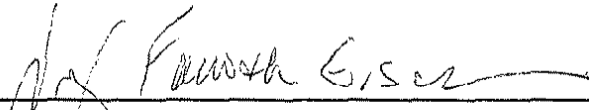
A. No.

Clearly, Claimant's guilt was established by his admissions, *supra*, and there is no room for reasonable argument that Carrier has not met its' burden of proof. It is noted that the Claimant requested "forgiveness" from the Carrier by apologizing for his actions on June 20th. However, this act of contrition does not relieve the Claimant from taking responsibility for violating operating rules of conduct, nor does it relieve him from taking full responsibility for the resultant injury to Mr. Smith. Given the severity of this proven offense, including the Claimant's admission of guilt, there is no basis for disturbing the disciplinary action taken by the Carrier and the claim must be denied.

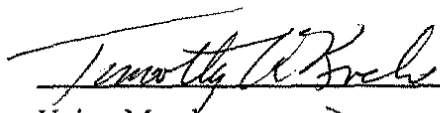
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UNION CASE No.D21303806
COMPANY CASE No.12 (06-0459)

AWARD

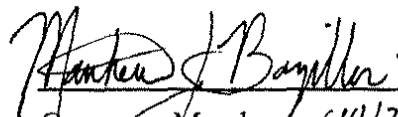
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member June 4, 2008



Company Member 6/4/2008