

AWARD NO. 88  
Case No. 88

Organization File No.  
Carrier File No. 2008-016048

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The discipline (withheld from service by letter dated October 25, 2007 and subsequent dismissal by letter dated March 14, 2008) imposed upon Mr. J. Frazier, Jr. in connection with charges of possible violation of CSX Operating Rules - Rule G and CSX Safeway General Safety Rule - GS-2 Substance Abuse and a charge of possible violation of his November 27, 2006 Substance Abuse Contract, in regard to a Company Short Notice Follow-Up alcohol breath test on October 22, 2007, was unjust and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, Claimant J. Frazier, Jr. shall now have this discipline removed from his record and he shall be reinstated to service with all other rights and benefits restored and compensated for all time that may have been lost as a result of this removal from service and discipline.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant, at the time of the incident giving rise to this dispute, was assigned as a Production Foreman on the "R1" System Rail Team, a track gang with a floating headquarters. When he

reported for work on Monday, October 22, 2007, he was directed to submit to an alcohol breath test in accordance with conditions imposed upon him as part of a prior Rule G bypass agreement. The results of this test were positive, with readings of 0.179 at 6:08 am and 0.174 at 6:25 am. As a result, Claimant was removed from service and directed to attend a formal investigation. Following the investigation, Claimant was dismissed from service.

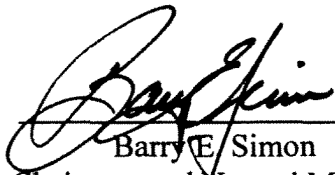
Although Claimant testified that he had used Listerine before reporting for work, he did not dispute the test results. He acknowledged that he had been drinking the night before, but said he had stopped drinking at 8:00 or 9:00 pm and then drove 400 miles from Charleston to the work site, arriving between 3:30 and 4:00 am. Claimant did not believe he intoxicated because he was not staggering or slurring, and did not get into an accident or arrested for DUI.

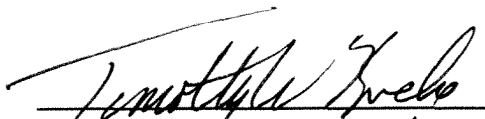
We are satisfied that the Carrier has produced substantial evidence to support its charge against Claimant. Even if he had used Listerine right before taking the test, it is highly unlikely that such use would have resulted in such a high reading unless he ingested a large quantity of it. The record reflects that Claimant had been found to be under the influence of alcohol on November 1, 2006, which resulted in his electing the earlier Rule G bypass. Claimant entered a rehabilitation program and returned to work in May 2007. This second offense came only six months after his return. We are troubled by Claimant's suggestion that he might have developed a tolerance for alcohol. This would imply that Claimant believed he could drink without any obvious symptoms. If his rehabilitation were successful, he would have known that he could not drink at all.

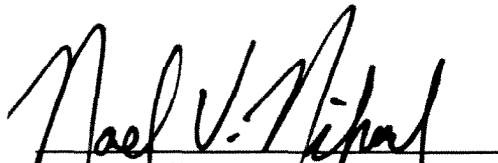
In addition to the fact that Claimant came to work with alcohol in his system twice in a relatively brief period of time, we note that his discipline record also shows he was dismissed from

service in 1995, although the reason for that action or its duration are not evident from the record. Despite the fact that Claimant had nearly 35 years of service at the time of this incident, we are not inclined to modify the discipline imposed by the Carrier in this case.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Timothy W. Kreke  
Employee Member *March 7, 2011*

  
Noel V. Nihoul  
Carrier Member *3/4/11*

Dated: *February 28, 2011*  
Arlington Heights, Illinois