

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43486
Docket No. MW-44768
19-3-NRAB-00003-180293**

The Third Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s discipline (time served suspension) of Mr. G. Olin for alleged violation of CSX Transportation Operating Rules 104.2, 104.3 (a) and (c), CSX Safe Way Rule GS-1 and the CSXT Ethics & Harassment Policy was unsupported, arbitrary and constituted a violation of the Agreement (Carrier’s File 2017-217386 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Olin shall ‘*** be fully exonerated of all charges brought against him and to be made whole, including all lost pay, benefits and credits.’”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

By letter dated February 7, 2017, the Claimant, Assistant Bridge Foreman G.L. Olin was notified that he was found responsible for violation of the Carrier's rules and its Ethics and Harassment Policy and was assessed the discipline of time served amounting to 118 days out of service without pay as follows:

"Dear G. L. Olin:

This is in reference to the formal investigation that was held on Friday, January 20, 2017, in the General Office Building, 1st Floor Conference Room, One Bell Crossing Road, Selkirk, New York. The charge letter, transcript, and all exhibits reviewed and discussed during the course of the investigation are included in this packet.

Based on the evidence presented during the course of hearing, substantial evidence was revealed demonstrating that you violated CSX Transportation Operating Rules 104.2 and 104.3 (a) (c), CSX Safe Way Rule GS-1; as well as, CSXT Ethics & Harassment Policy.

Upon my analysis of all factors related herein, the discipline to be assessed is time served ending Tuesday, February 7, 2017, with Wednesday, February 8, 2017, being the first eligible day to return to work.

**J. E. Brass
Division Engineer – Albany"**

Substantial evidence of record supports the Carrier's determination of responsibility in this case. At the investigation, the manager of Program Bridges, Robert Fulsang testified that an employee made him aware of a text message he received from Mr. Olin that involved racial and derogatory comments. The testimony is presented as follows:

“Yeah. The text message to Dave, Fred, Watson, Ray, Nick, and 3 more. Text message was Thursday at 11:39 AM. First text is Fred Kovits. It’s a multi-media image of an open pizza box. On the inside of the pizza box it reads,

What do a pizza delivery driver and a gynecologist (sic) have in common? They both have to smell it but neither of them gets to eat it.

Next is a text from Mr. Olin:

You might better worry about the Germans (krouts), when the cop’s get rid of the blacks, their coming for krouts

I’m glad I’m not related to Hitler, Uncle Adolf.

Next text from Fed Kovits:

You might want to because they will get rid of the mongrels first. They are just about worthless anyway. Pieces of shit.

And then text from Nick Foster CSX:

LOL”

Mr. Olin testified that he did send the text in question, replying to Mr. Kovits, whom he joked with often and was unaware that it was going to other employees. He testified it was on his personal phone and during his unpaid lunch period.

The following Operating Rules and the Carrier’s Code of Ethics apply to this case:

Operating Rule 104.2 states in pertinent part:

“Employee behavior must be respectful and courteous.”

Operating Rule 104.3 states in pertinent part:

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

- a. Boisterous, profane, or vulgar language; or**
- b. Practical jokes or horseplay”**

The Code of Ethics states in pertinent part:

“A Harassment-Free Workplace: Teamwork is the foundation of our business. No team can be successful when harassment and discrimination are present. Everyone deserves the Freedom to do their job in a professional and respectful environment free from behavior that creates intimidating, hostile, or offensive working conditions. We do not tolerate any form of harassment. Harassment affects everyone. It is personally offensive, lowers morale, and interferes with our ability to work together.”

Surely the case is proven beyond any doubt that Mr. Olin is responsible for the totally unacceptable racially denigrating comments that compelled an employee to bring the matter to the attention of Mr. Fulsang. The misconduct undermines the team work which is the foundation of the Carrier’s business, as set forth in the Code of Conduct and simply cannot be explained away as a joke. The discipline imposed is neither arbitrary, capricious nor excessive. The Claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 1st day of March 2019.