

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:

In accordance with the provisions of Rule 25, Section 3, of the June 1, 1999 Agreement the following will serve as our appeal of the discipline accessed [sic] to BMWED employee K. L. Vaughn ID*****, as a result of the hearing held March 13, 2007, in the conference room at CSX Transportation Office, located at 4100 Vanderbilt Road, Birmingham, AL 35217.

For the reasons stated, as well as numerous objections at the hearing, it is respectfully requested that the charge letter and all matters relative thereto be removed from Mr. Vaughn's personal file, and he be made whole for all losses suffered as a result of the Carrier's actions, and be returned to the employment of CSX Transportation, Inc.

OPINION OF BOARD:

Machine Operator K. L. Vaughn (hereinafter referred to as "Claimant" or Mr. Vaughn") was hired by Carrier on August 4, 2003. Prior to his dismissal, the Claimant was working as a machine operator at Boyles Yard in Birmingham, AL, under the supervision of Roadmaster C. Beilharz.

On February 2, 2007, Roadmaster Beilharz was conducting a job briefing for his employees, including Claimant Vaughn. The record demonstrates that at some point during the briefing the Claimant began "angry and agitated" while describing an incident which occurred the previous day.

Despite Roadmaster Beilharz repeated directive to “calm down”, the Claimant continued his tirade, eventually “pacing around the room, yelling profanities and waving his arms”. When it became evident that the Claimant did not intend to “calm down”, his supervisor instructed him to “leave the property”, however, the Claimant again ignored his supervisor’s directive and instead sat down with his co-workers. After being told, for a second time, that he “needed to leave” and that per his repeated demand that he be “paid for the day”, the Claimant eventually left the property.

As a result of the incident, in a letter dated February 14, 2007 the Claimant was instructed to attend a March 1, 2007 investigation and charged with “conduct unbecoming an employee of the Carrier, in violation of CSX Operating Rules A, GR-2 and CSX Safeway Rules GS-1 and CSX Policy on Workplace Violence”. After three (3) postponements at the request of both parties, the hearing was held on March 13, 2007 with Mr. Vaughn and his representative present throughout the proceedings. On April 2, 2007, the Claimant was informed that he had been found guilty as charged, and dismissed from Carrier’s service.

In a April 9, 2007 letter, BMW Vice Chairman A. H. Shelton appealed the discipline to former Director Labor Relations J. H. Wilson. Initially, Mr. Shelton rejected the administrative handling of the investigation arguing that:

“Mr. Vaughn’s hearing was scheduled for March 1, 2007, at 13:00 hours CSX standard time. On the above referred to time and date the principal and his representative were at the appointed place to attend the investigation. Also, the Carrier failed to notify the Principal or the Organization for any postponement before March 1, 2007. Therefore, the discipline was harsh and excessive, as well as the Carrier’s failure to prove its case, Claimant Vaughn should be returned to service and compensated for all lost wages.....”.

Vice Chairman Shelton went on to opine:

“Mr. Vaughn is a diligent and hard working employee and is a valuable asset to the

company. We feel that the termination is very harsh and that Mr. Vaughn is being treated very unfairly.....”.

Director Labor Relations J. C. Amidon confirmed the parties’ August 2, 2007 conference of the dispute and issued the Carrier’s written appellate declination of the claim in an August 15, 2007 letter. At the outset, Director Amidon averred that Claimant was provided a fair and impartial investigation in accordance with Rule 25 (Discipline) of the 1999 BMW/CSXT System Agreement. With regard to the Organization’s “administrative” assertions, Mr. Amidon contended that: *“The Claimant was provided proper notice, in writing, of the charge. The Investigation was originally scheduled for March 1, 2007; however, in a letter dated February 25, 2007, it was postponed until March 6, 2007...”*.

Regarding the merits of the dispute, Director Amidon maintained that the Claimant was guilty as charged, and noted the testimony of Carrier witnesses who “clearly stated” that: *“The Claimant engaged in threatening and inappropriate behavior on February 2, 2007....”*. In terms of the level of discipline assessed, Mr. Amidon argued: *“In reviewing Mr. Vaughn’s personnel records, it indicates that he was granted a waiver in which was included a thirty (30) day actual suspension in connection with an incident which occurred on July 20, 2006, when he reportedly threatened his supervisor with physical violence. Therefore, the discipline assessed in this instance is not excessive but commensurate with the nature of the proven offense”*.

In an October 1, 2007 letter, Vice Chairman Shelton rejected Carrier’s appellate declination of the claim, reiterating that Carrier “wrongly failed” to attend the initial hearing on March 1, 2007. Additionally, Mr. Shelton argued that the Carrier failed to show that Roadmaster Beilharz was indeed “intimidated” by the Claimant, and that perhaps he had merely “misunderstood” Mr.

Vaughn's behavior and demeanor. In that regard, Mr. Shelton opined: *"During the job/safety meeting on February 2, 2007, Claimant Vaughn interjected his opinions about the work practices of co-workers in a rather loud and animated manner. Roadmaster Beilharz perceived the Claimant's actions as threatening in nature, and instructed the Claimant to 'leave the room' and 'not return for the remainder of the day'. After questioning why he was being removed from duty for the day, and expressing his displeasure at the decision, the Claimant complied with the Roadmaster's instruction....."*

Finally, the Vice Chairman argued:

"Testimony revealed that there were ten (10) employees present when the alleged incident took place, yet the Carrier chose to only bring forth Roadmaster Beilharz, his assistant, Doug Singleton, and Track Inspector Larry Williams. We submit that Assistant Roadmaster Singleton's testimony is obviously biased due to his management position and relationship with the Roadmaster. Track Inspector Williams is more of a 'disinterested third party' to the matter and a review of his testimony does not support the Carrier's position in this instance...."

Further correspondence between the Parties failed to resolve this dispute. Therefore, the issue has been placed before the Board for adjudication.

The Organization asserted throughout the consideration of the dispute on the property that the Carrier violated Rule 25(d) of the Agreement when it did not provide proper notice of the postponement of the hearing from March 1, 2007 to March 6, 2007. For its part, the Carrier argues that there is *"nothing in this rule that specifies how or to whom the request for postponement is to be made...."* In that regard, we concur with the findings of Public Law Board 4861, Award No. 14, in which the Neutral stated: *"Initially, the Organization objected to the manner in which the Carrier*

notified the Claimant..... Notwithstanding this objection, the Board is unable to find a flagrant disregard of the specified requirements under Article 50, Section A (5). Recognizing that the Carrier may not have perfected service in strict adherence with contractual requirements, the procedural error committed here at best was technical in nature and cannot be considered sufficiently crucial to 'vitiate' the notice of investigation....".

Turning to the merits of the issue, the Claimant was charged with conduct unbecoming an employee of the Carrier in violation of CSX Operating Rules A, GR-2, and CSX Safeway Rule GS-1 and CSX Policy on Workplace Violence. In pertinent part, those rules set forth:

Rule A:

Employees must know and obey rules and special instructions that relate to their duties. When in doubt as to the meaning and application of any rule or instruction, employees must ask their supervising officer for clarification.

Rule GR-2:

All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:

1. Use boisterous, profane or vulgar language.
2. Enter into altercations while on duty or on company property.
3. Be disloyal, honest, insubordinate, immoral, quarrelsome....

Rule GS-1:

All employees governed by these rules must ensure that:

1. A copy of the CSX Safeway is accessible when on duty.
2. Behavior in the workplace is civil and courteous.

CSX Policy on Workplace Violence-Transportation:

Definitions and Prohibitions

Threats or acts of violence are any words or actions that create a perception of intent to harm persons or property at the workplace, or actually bring about such harm.

*Loud, angry or disruptive behavior that creates a fear or anxiety in the workplace.

In the circumstances, the record evidence, including the testimony of witnesses who observed the February 2, 2007 interchange between the Claimant and his supervisor, Roadmaster Beilharz, clearly supports Carrier's finding(s) of guilt.

At the outset, the Organization maintained that Roadmaster Beilharz may have "misunderstood" or "misconstrued" the Claimant's behavior on February 2, 2007 as "threatening". However, the record demonstrates that this is not the first time the Claimant behaved in a threatening manner toward the Roadmaster. According to Mr. Beilharz' uncontested testimony, the Claimant's behavior on February 2, was "similar to other times he has disrupted meetings with boisterous, profane, and threatening behavior". In that connection, it is not disputed that, on at least one (1) prior occasion, the Claimant did indeed physically threaten the Roadmaster.

Although the Organization argued that Assistant Roadmaster Singleton's testimony in that regard was "obviously biased due to his management position", and that Track Inspector Williams testimony "does not support Carrier's position", we do not concur. When asked to describe the Claimant's demeanor during the Roadmaster's February 2 job briefing, Mr. Singleton testified that the Claimant was "trying to intimidate the Roadmaster" and "showing disrespect" in an attempt to "undermine Mr. Beilharz authority". Mr. Singleton went on to report that the Claimant was "boisterous and profane", as well as "insubordinate", in that he did not comply with the

Roadmaster's directive to "leave the room". While Track Inspector Williams was not as forthcoming as Mr. Singleton, he did state that on the date at issue, the Claimant was "using cuss words" while speaking "in his own way". When asked what he meant by "speaking in his own way", the Track Inspector admitted that "some people would say it (his tone) was offensive". Further, when asked if it is "common" during job briefings for an employee to "use profanity and direct it at the supervisor", Mr. Williams replied: "No, it is not common".

For his part, although the Claimant denied having a "problem with anger" he did admit that he was "seeing a psychiatrist for it and I'm on medication for it". When asked, "Do you always know when your anger is getting out of hand"? The Claimant replied: "Yeah, because when I'm getting out of hand, I'm telling myself to shut up and go home".

In defense of his behavior on August 4, the Claimant asserted that other employees "got mad" at the Roadmaster, "threwed coffee at him and threatened to kill him", but were not taken out of service as he had been. According to the Claimant, he was being "singled out" and the Roadmaster had been "looking for anything to get my job for the last six (6) months". However, there is no evidence in the record which supports the Claimant's assertion that other employees "threwed coffee" or "threatened to kill" the Roadmaster, nor do we find evidence that supports the Claimant's contention that he was being "singled out". In the circumstances, the Claimant's arguments/explanations regarding his behavior on February 2, 2007 are clearly self serving and simply not credible.

Finally, with regard to the quantum of discipline assessed, the Claimant's personal record indicates that he was granted a waiver, which included a thirty (30) day actual suspension, in connection with an incident which occurred on July 20, 2006 when he reportedly "threatened his

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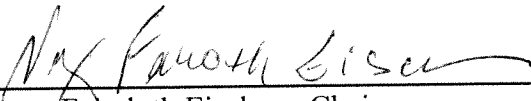
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supervisor with physical violence”.

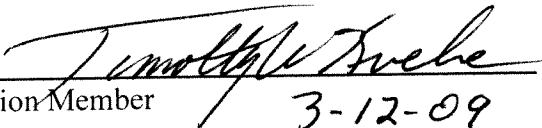
Premised upon all of the foregoing, we find no basis to modify or overturn the discipline proposed, and therefore, this claim must be denied.

AWARD

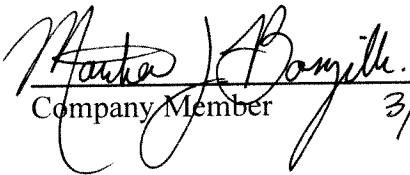
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 3-12-09



Company Member 3/12/09