

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 15
vs.)	AWARD NO. 15
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The forty-five day actual suspension imposed upon Machine Operator Paul Acree in connection with conduct unbecoming an employe in connection with allegedly making threatening remarks, using profanity and making physical contact with another employe is unjust, unwarranted and in violation of the Agreement [System File D21703801/12(07-0524)].**
- 2. As a consequence of the violations referred to in part (1) above, we request that the charge letter and all matters relative thereto be removed from Mr. Acree's personal file and he be made whole for all losses suffered as a result of the Carrier's actions.**

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant, P. Acree, has been employed by the Carrier since 1978. On January 25, 2007, Claimant was charged to attend a formal hearing "to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 0700 hours, on January 24, 2007, at or near MP AN 621.2, on the Thomasville Subdivision, near Dupont, Georgia, in which you made threatening remarks to Mr. D.J. Rhodes, Team Manager. Also, while leaving the job site you uttered profanity toward, and made physical contact with fellow employee Mr. T.E. Butcher." Claimant was charged with violating several Carrier Rules, as well as the Carrier's Policy on Workplace Violence and Policy on Harassment. Following the investigation, the

Carrier found Claimant guilty of the charges and assessed him a 45-day suspension. He was also ordered to complete an Anger Management program.

Dennis Rhodes, Carrier System Production Team Manager T-9, stated at the investigation that on January 24, 2007, Claimant was working for him as a spike hammer operator. He testified that he pulled Claimant and Assistant Foreman E.B. Free aside, and told Claimant he was going to disqualify him due to his unsafe conduct and low productivity. Mr. Rhodes stated that Claimant pointed his finger at him and began to tell him, in a loud, strong voice, that he was being harassed and was going to sue. Mr. Rhodes testified that he asked Claimant several times not to point his finger at him, and Claimant replied, "[W]hat are you gonna do about it?" Mr. Rhodes testified that Claimant also said that he would take care of the matter when he caught Mr. Rhodes on the street.

Mr. Rhodes further testified that Mr. Free intervened and asked Claimant to calm down, and Claimant again replied that if they were out on the street he would take care of the situation. Mr. Rhodes stated that he then removed Claimant from service, and Claimant continued to point his finger and state that he would take care of Mr. Rhodes on the street. Mr. Rhodes further stated that as Claimant and Mr. Free were leaving the property, Claimant walked toward the team and stated, in a very strong voice, "Get the f___ out of the way."

Mr. Free testified at the investigation. and confirmed Mr. Rhodes' version of events. He stated that he intervened because he believed matters were about to get out of hand. Spike Driver Operator Timothy Butcher also testified at the investigation. He stated that Claimant approached him, said, "Get the f___ out of my way," touching or grabbing at Mr. Butcher's elbow.

Claimant testified at the investigation that when Mr. Rhodes told him that he would be disqualified, he became "terribly mad." He acknowledged that he made statements to the effect that Mr. Rhodes did not wish to meet him on the street. He stated that he did not recall if he pointed his finger at Mr. Rhodes, but he was "blind mad" and did not know what he had done. He acknowledged that Mr. Free had intervened and told him to calm down. He stated that he did not have a clear recollection of events but past harassment had "just gotten to (him)."

The Carrier first contends that all of Claimant's due process rights were fully protected and the hearing was conducted in a fair and impartial manner. On the merits, the Carrier contends that it rightfully determined Claimant violated applicable Carrier rules by making threatening remarks, using profanity and committing battery upon another employee. The Carrier points out that Claimant's supervisor, Manager D.J. Rhodes, provided detailed testimony regarding Claimant's verbal assault upon him, and the written statement and testimony of Claimant's fellow employee established that Claimant came up behind him and grabbed his elbow. The Carrier concludes that in light of Claimant's violation and his record of similar infractions, the 45-day suspension cannot be considered unfair, arbitrary or discriminatory and should be upheld.

The Organization asserts that the record clearly demonstrates the Carrier had no sufficient cause to discipline Claimant. Rather, the Organization states, the record shows that Claimant felt harassed and unfairly treated when Mr. Rhodes told him that he would be disqualified. He voiced disapproval, the Organization notes, and outlined the steps he would take to protest the disqualification. However, the Organization argues, nothing Claimant did could be interpreted as threatening or creating fear. Thus, the Organization concludes, the Carrier has failed to meet its burden of establishing that Claimant was guilty of the charges, and the claim should be sustained.

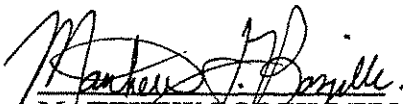
The Board has carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity which deprived Claimant of his right to a full and fair investigation. On the merits, we find that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. The Carrier's witnesses described conduct any reasonable person would find threatening, including Claimant's repeated statements that he would take care of Mr. Rhodes on the street. Claimant largely admitted making the statements attributed to him, and acknowledged that he was so angry he was not sure what he had done. There is no question that the charges have been proven.

As this Board recognized in another case involving similar conduct by Claimant, see PLB 7104, Case No. 11, the actions at issue here were serious in nature and need not be tolerated by the Carrier, which has the right and obligation to maintain a workplace free from threats of violence. Under these circumstances, we see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.


JACALYN L. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member

Dated this 10th day of October, 2008.


TIMOTHY KREKE
Organization Member

Oct. 10, 2008