

PUBLIC LAW BOARD NO. 7120

(BROTHERHOOD OF MAINTENANCE OF WAY
PARTIES TO DISPUTE: (EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated February 3, 2010, the Carrier directed R. R. Lockamy (“the Claimant”) to attend an Investigation to be held on Thursday, February 18, 2010, at the Engineering Office in Leland, North Carolina, to develop the facts and place his responsibility, if any, in connection with an incident that occurred on January 25, 2010, in which he allegedly made threatening and derogatory remarks regarding the President of the United States. In connection therewith he was charged by the Carrier “with conduct unbecoming an employee of CSX Transportation, creating a hostile work environment, harassment and possible violations of, but not limited, to CSX Transportation Operating Rules – General Rule A, General Regulation GR-2 and GR-2A; CSX Safe Way – General Safety Rule GS-1; CSX Policy On Workplace Violence, as well as the CSX Code of Ethics.” The hearing was postponed at the Organization’s request to March 8, 2010.

FINDINGS:

Public Law Board No. 7120, 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.

The Board has jurisdiction over the dispute involved herein.

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

The Claimant, whose service date is August 14, 1978, was employed by the Carrier at the time of the Investigation as an Assistant Foreman Flagging and reported to Davis Yard in Wilmington, North Carolina. Five witnesses were called to testify at the Investigation. The first, the Roadmaster who signed the charge letter, acknowledged that he had no personal knowledge of the incident that was the subject of the charges.

The second witness, the Florence Division Safety Coordinator, testified that the remark in question that is the subject of this proceeding was “not a threatening remark but an unusual remark.” (Tr. 17). The third witness, a Track Inspector with 30 years on the railroad, who was present at the alleged incident, testified that he did not hear any threatening or derogatory remarks regarding the safety and security of the President of the United States made by anyone. (Tr. 19).

The fourth witness, an Assistant Track Inspector with 13 years of service, testified that he was present during the conversation where a threat and derogatory remarks were allegedly made. He described what was essentially a political discussion and testified that he did not recall any threatening or derogatory remarks made by the Claimant. He stated that he did not feel as though the Claimant created a hostile work environment or harassed anybody during the incident. (Tr. 22-23).

The fifth and final witness was the Claimant, Mr. Lockamy. He described the incident in question as a political discussion and denied making any derogatory or threatening remark in the conversation.

At the conclusion of the hearing the Organization representative argued that the

Carrier has not sustained its burden of proof to establish that the Claimant was guilty of the offenses of which he was charged. He noted that people frequently disagree about matters of politics and religion and contended that that is what we have in the present instance. He requested that the Claimant be exonerated of the charges placed against him and that the charge letter and all matters relative to the charge letter be removed from the Claimant's personnel file.

Following the close of the hearing, by letter dated March 26, 2010, the Roadmaster notified the Claimant of the following disposition of the charges against him:

After a thorough review of the transcript of this investigation (copy attached), the facts developed in the investigation were not conclusive enough to support all the charges and rules violations listed above. Of the three witnesses, only one was able to describe a comment that would have been considered a "threatening" one concerning the President of the United States. The other two witnesses were present, did hear a conversation, but did not hear any threatening remarks made concerning the President of the United States. In summary, the conversation should not have taken place, including any inappropriate comments. Based on the above, this letter will serve as a reprimand for your actions and will be placed in your personnel records file.

The Board has carefully reviewed the record in this case and agrees with the Organization's position that the Carrier has not sustained its burden of proof by substantial evidence. Contrary to the Roadmaster's decision letter of March 26, 2010, the one witness relied on by the Carrier to justify the issuance of a reprimand to the Claimant expressly stated that the Claimant did not utter a threat against the President of the United States. This Board fully agrees with that assessment by the Carrier's witness. The New Oxford American Dictionary (2001) defines "threat" as follows: "a statement of an intention to inflict pain, injury, damage, or other hostile action on somebody in retribution for something done or not done." There was nothing said by the Claimant that could be remotely understood by any fair listener as the expression by him of an intention to harm

the President or anybody else.

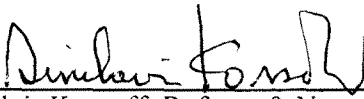
What occurred in this case was a political conversation in which certain remarks were made that were inappropriate in a public setting. However they were not threatening or harassing. The Board understands what motivated management to go ahead with an Investigation in this case. It wanted to impress upon employees that there are certain words that should never be uttered in the workplace. The Board can appreciate that point and will not second-guess management on what is necessary in providing a safe environment for its workforce. Nevertheless, contrary to what the March 26, 2010, decision letter states, the fact is that no threatening statement was made in this case. Therefore the charges against the Claimant must be dismissed and his claim sustained. The remedy requested by the Organization is granted, namely, that any reference to the charges or the reprimand be removed from the Claimant's file.

A W A R D

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the date the signed Award is transmitted to the parties.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
June 4, 2010