

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 4, (Case No. 4)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE
(Organization File: D721903012)**

vs

**CSX TRANSPORTATION, INC.
(Carrier File:2012-118797)**

William R. Miller, Referee and Neutral Member
P. E. Kennedy, Employee Member
R. Paszta, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged M. L. Dickerson with violation of Operating Rules - General Rule A and G; General Regulations, Rules GR-2 and GR-3A; the CSX Policies on Unlawful Harassment and Violence in the work place; the CSX Firearm/Weapon Policy and the CSX Code of Ethics and was substantial evidence adduced at the Investigation on February 7, 2012, to prove the charges; and was the discipline assessed in the form of permanent dismissal warranted?

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute.

The Board has thoroughly reviewed the record and found that the Carrier complied with Rule 25 of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

On January 23, 2012, Claimant was directed to attend a formal Investigation on February 2, 2012, which was mutually postponed until February 7, 2012, concerning in pertinent part the following charge:

"...to determine the facts and place your responsibility, if any, in connection with an incident that occurred during the evening of Monday, January 9, 2012, culminating with your being escorted from the Embassy Suites Motel, in the vicinity of Savannah, Georgia, by local authorities. More particularly, during the evening on the date and at the location identified above, it is alleged that while you were in various public areas of the motel, which was a CLC Lodging Facilities provided and paid for the company in connection with your assignment on System

Production Team 5XT6, you propositioned the wife of a fellow employee for sexual favors, you were quarrelsome, vicious, combative and threatening to other employees and the public, you used explicit and inappropriate language, you appeared to be intoxicated; moreover, at the time you were evicted via local authorities from your room, it was discovered that you had a firearm in your possession, or in the lodging facility being provided to you by the company.

In connection with the above incident, you are charged with conduct unbecoming a CSX Employee, possessing a firearm in CLC lodging (having a firearm on company property), and public intoxication, threatening fellow employees, as well as, possible violations of , but not limited to, CSXT Operating Rules - General Rule A and G; General Regulation, Rules GR-2, and GR-3A; the CSX Policies on Unlawful Harassment and Violence in the work place; the CSX Firearm/Weapon Policy; and the CSX Code of Ethics."

On February 27, 2012, Claimant was notified that he had been found guilty as charged and was assessed discipline in the form of permanent dismissal. On February 28, 2012, the Claimant requested expedited handling of his case as provided for in Appendix (N) Expedited Discipline Agreement of the June 1, 1999 BMW/CSXT Agreement.

The facts indicate that on the evening January 9, 2012, Claimant and other crew members working on System Production Team 5XT6 were provided hotel accommodations by the Carrier at the Embassy Suites Motel, near Savannah, Georgia. During the course of the evening while "off duty" Claimant consumed alcoholic beverages and had a verbal altercation with Foreman D. Spring's wife. Mrs. Springs alleged that Claimant requested her to perform a sexual act ".... job" which embarrassed and angered her. She further asserted that the Claimant threatened physical violence to her husband. After that confrontation Mrs. Springs reported what had allegedly occurred to her husband who then decided to discuss the matter with the Claimant. Foreman Springs testified when he talked to the Claimant, the Claimant was vulgar, abusive and threatening towards him.

On page 36 Foreman Springs was questioned about the incident between him and the Claimant and the alleged threat of physical violence towards him. He testified as follows:

"Farmer: Okay. In your statement you said down toward you kept saying he would handle me then and now, gentlemen, he told the gentlemen inside. Do you know what gentlemen he told?

Springs: The first time it was told to my wife. The next time it was told to Mr. Bowman.

Farmer: And what was told to Mr. Bowman?

Springs: He come in and told just me to be careful he was packing and he would blow my head off. That's the best I can recollect he told me in there, in the lobby and that had been the second or third time I had heard it and that was it." (Underlining Board's emphasis)

In response to Foreman Spring's testimony the Claimant testified that he did make an off-color remark to Mrs. Springs, but it was only in response to the derogatory remark made by her towards him. In regards to the alleged threat of violence to Mr. Springs, Claimant admitted he used some colorful language during a heated discussion, but there was never any intention to harm Mr. Springs.

Multiple co-workers testified to the incident and confirmed there was a verbal altercation wherein inappropriate language was used by the Claimant and he was threatening in nature. On page 41 of the transcript one of the witnesses to the incident Mr. John Berry was questioned as follows:

"Caruth: Mr. Berry, did Mr. Dickerson threaten you personally?

Berry: When we were outside, When him and Dorsey were confronting one another, he looked over at me, and Steve and Brad and said that he would kick anyone of our, could kick anyone of our asses. And then a few minutes later that's when he said we could all suck his And he just me, he just like more or less pointed at me, Shockey and Brad. Just sort of kind of pointed at us."

Employee S. R Shockey submitted a written statement pertaining to the incident and stated in part:

"...Dickerson had been drinking at lounge in the hotel. He made a vulgar, very inappropriate request of Mrs. Springs. She was very insulted by what Dickerson had said to her and you could tell it really upset her....

Shockey went on to state that while the Claimant was outside smoking with a group of co-workers he was confronted by Mr. Springs regarding what he had said to Springs's wife. Schokey wrote that the Claimant said the following:

"...he showed a group the clip for his gun. He also threatened Mr. Springs numerous times and went as far tell Mr. Springs he could just blow his head off."

Employee Bradley Dolan confirmed in his written statement that he heard the Claimant state that **"... he was going to blow Mr. Springs head off."**

Subsequently the Claimant was evicted from the premises of the hotel by local police who discovered during the eviction that Claimant had a pistol (firearm) in his hotel room. At that time the Claimant explained to the authorities that he had a permit to carry a concealed weapon and did so because he often worked in "high crime" areas that the railroad runs through. However, during the Investigation the Claimant admitted that he never received permission to carry the weapon on Carrier's property or Carrier furnished lodging and acknowledged on page 84 of the transcript he was in violation of the Carrier's prohibition to have had a weapon in the hotel. On that same page he admitted he was at least partially to blame for the boisterous altercations. On page 83 of the transcript Claimant testified: **"...I mean I wasn't blistered drunk or nothing, I mean I had alcohol in my system so, by law, yes I was intoxicated."** and on page 86 Claimant admitted he violated the Carrier's Workplace Violence Policy. Claimant attempted to posture his admission of guilt by arguing that he had been provoked by Mr. and Mrs. Springs, however, that argument is self-serving and is contradictory to all of the witnesses of the incident whose testimony and statements were far more credible. It is determined that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant was a short term employee with less than one year's service who threatened bodily harm to his Foreman, co-workers and had a firearm on his person and in a facility being provided by the Carrier. Additionally, the Claimant used reprehensible language and made vulgar comments to multiple people. The Carrier has a duty and obligation to provide a safe working environment for its employees free of threatening behavior. In this instance there was no excuse for Claimant's actions and we find no reason for mitigating the discipline as it was not arbitrary, excessive or capricious and was in accordance with the Carrier's Progressive Discipline Policy. The discipline will not be set aside and the appeal/claim is denied.

AWARD

Appeal denied.



William R. Miller, Referee

Dated: May 7, 2012