

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 4

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. R. Sundquist by letter dated September 18, 2008 in connection with charges that alleged his statement on July 24, 2008 was a failure to comply with Rule GCOR 1.6 Conduct and C.P. Policy 1803, Violence in the Work Place, was arbitrary, capricious, excessive and in violation of the Agreement (System File D-16-08-520-01/8-00518 CMP).
2. As a consequence of the violation referred to in Part (1) above, Claimant R. Sundquist shall now receive ‘ . . . reimbursement to service with seniority unimpaired and for all lost wages, including but not limited to all straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, and any and all other benefits to which entitled, but lost as a result of Carrier’s arbitrary, capricious, and excessive discipline in dismissing Claimant from service.’”

FINDINGS:

By notice dated July 31, 2008, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with an alleged threat that Claimant made against a fellow employee. The hearing was conducted, after a postponement, on August 26, 2008. By letter dated September 18, 2008, the Claimant was informed that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier’s service. The Organization filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant was afforded his due process rights, because there were no procedural violations in the handling of this matter, because the facts developed support a finding of responsibility, and because the discipline imposed was not unreasonable or excessive.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to substantiate all of the charges in this matter, because the Claimant admitted to making the comment in question but the Carrier failed to establish the context, and because the Carrier's decision to dismiss the Claimant was arbitrary, capricious, excessive, and in violation of the Agreement.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The Claimant was guaranteed all of his due process rights throughout the proceeding.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of making serious threats toward a fellow employee. The Claimant was shown to have stated to the fellow employee that he would "lock him in his home and burn his house down." The Claimant admitted that he made that verbal threat.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

The Claimant's behavior is a very serious violation of Carrier rules. The Carrier has zero tolerance toward violence in the workplace. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/28/2012



ORGANIZATION MEMBER

DATED: 10/12/12