

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 75

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

1. The Carrier’s discipline (immediate termination from service) of Ms. S. Jenkins by letter dated July 23, 2009 in connection with an alleged violation of USOR General Rule H, the Code of Conduct and also the Anti-Harassment policy was unjust, capricious, based upon unproven charges, and in violation of the Agreement (System File A 09-08-27/IC-BMWE-2009-00069).
2. As a consequence of the Carrier’s violation outlined in Part 1 above, Ms. Jenkins shall be cleared exonerated of all charges in accordance with Rule 33 and be reimbursed for all wage loss sustained as a result of the Carrier’s action, returned to service immediately, her record cleared of all charges and not be affected by this decision.”

FINDINGS:

By letter dated July 13, 2009, the Claimant was directed to attend a formal hearing and investigation on charges that she had violated Carrier rules and/or policies by allegedly using a racial slur. The investigation was conducted, as scheduled, on July 15, 2009. By letter dated July 23, 2009, the Claimant was informed that as a result of the investigation, she had been found guilty as charged, and that she was being dismissed from the Carrier’s service. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier’s decision to discharge her. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because

substantial evidence proves that the Claimant was guilty as charged, because the Claimant was afforded a fair and impartial investigation, and because the discipline imposed was not harsh, arbitrary, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Claimant's speech was common and amounted to nothing more than "shop talk," because the Claimant was punished for alleged harassment although the alleged "victims" did not unequivocally perceive any harassment, because the Carrier engaged in selective enforcement of its alleged "zero tolerance" anti-harassment policy, and because dismissal was excessive under the circumstances even if discipline was warranted.

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


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 violating Carrier rules when she used the term "nigger" in the presence of two fellow employees while on duty. The Claimant denied that she used the term. She also apologized to both individuals who were in the truck with her for her language. There is no question that the use of that term violates Carrier General Rule H, as well as the anti-harassment policy.

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.

It is fundamental that in a diverse workforce a Carrier has the right to have a strict policy prohibiting the use of derogatory terms and prohibiting harassment. This Board has reviewed the Carrier's policy, and we find that it is reasonable. We also find the Carrier's "zero tolerance" for harassment is a legitimate policy. Given the serious abuse of the Carrier's policy on the part of the Claimant, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment for the use of that derogatory term in front of other employees. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: MARCH 31, 2011



ORGANIZATION MEMBER

DATED: MARCH 31, 2011