

**PUBLIC LAW BOARD NO. 7163
CASE NO. 389**

CSXT File No: 18-41093

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY
)	EMPLOYES DIVISION - IBT RAIL CONFERENCE
)	
TO)	VS.
)	
DISPUTE)	CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s discipline (dismissal) of Mr. J. Garrett, by letter dated February 26, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.2(d) and 104.3(a) and (e) was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier’s File 18-41093 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant J. Garrett shall be exonerated, returned to service immediately, with all rights and benefits unimpaired and compensated for all loss including straight time, overtime and other compensation.”**

FINDINGS:

The Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Carrier hired the Claimant on August 1, 2011. The Claimant and the Roadmaster were driving their own respective vehicles, and passed on the road. The Roadmaster inquired about the Claimant grinding a switch. The Claimant stated that he did not complete the job because he needed clarification on how to complete the task. The Claimant stated that he called someone other than the Roadmaster for assistance. The Roadmaster asked him if he had time to complete the job, and he said no. The Roadmaster asked him if he could do the job in the morning, and he said no. The Claimant started using profanity while his voice continued to raise. He stated that he was sick of the Roadmaster always on his case, and stated that he had turned the Roadmaster in for ethic violations 12 times. During the course of this conversation, the Roadmaster also started using profanity. The Claimant stated that they could pull off the road to settle the matter, and made the statement that he would kick his ass. The other employee who was in the vehicle of the Roadmaster encouraged the Roadmaster to just drive away. The Roadmaster asked the employee who was in the car to complete the work.

The Carrier issued a Notice of Investigation letter dated September 21, 2017, which stated as follows "...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1528 hours, on September 8, 2017, in the vicinity of Syracuse (SO-Subdivision). You threatened your Manager with bodily harm and all circumstances related thereto..."

Following several postponements, the investigation hearing was held on February 6, 2018. Following the investigation hearing, the Claimant received a Discipline Notice dated February 26, 2018, finding a violation of CSX Transportation Operating Rule(s) 104.2(d) and 104.3(a)&(e). The Claimant was dismissed. The Organization appealed the Carrier's decision by letter dated March 13, 2018, and the Carrier denied the same on May 12, 2018. The Organization responded in its letter dated May 29, 2018. A formal conference was held with no change in the position of the Carrier on April 16, 2018. This matter is before this Board for a final resolution of the claim.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:

- 1) Did Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?
- 2) If so, did the Carrier establish by substantial evidence that Claimant was culpable of the charged misconduct or dereliction of duty?
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?

The Carrier contends that the Claimant was afforded a fair and impartial hearing. The Carrier asserts that the procedural arguments are without merit, and further have been waived for failure to raise these arguments on property. The Carrier also contends that the Claimant admitted to the conduct. The Carrier asserts the fact that the Manager used profanity during the course of their conversation does not excuse the more egregious and threatening comments of the Claimant. The Carrier contends that the Claimant's admission as to the conduct as well as the testimony of the Manager and another co-worker who witnessed the entire incident establish substantial evidence of the violation of the cited rules. Moreover, the Carrier contends that the discipline was justified and assessed in accordance with the Carrier's policy. The Carrier argues that the Claimant's conduct cannot be tolerated; it is the obligation of the Carrier to ensure a safe work environment. It is the Carrier's position that the claim should be dismissed.

The Organization contends that the Claimant was denied a fair and impartial hearing and the Carrier failed to comply with Rule 25 of the Agreement. Further, the Organization contends that the Carrier failed to meet its burden of proof. The Organization asserts that the record does not allow a reasonable mind to conclude that the charges were established when it is not disputed that the Claimant and his manager were involved in a heated discussion and the Claimant was dismissed and the Manager was not. The evidence establishes that such language is not out of the norm on the railroad and is commonly used and accepted. An argument does not constitute a threat especially when both parties are active and equal participants. Moreover the Organization argues that the penalty is arbitrary and unwarranted. It is the position of the Organization that the claim should be sustained and the Claimant be reinstated to service.

The Carrier charged the Claimant with violation of CSX Transportation Rule(s) 104.2(d) and 104.3(a)&(e) which read:

CSXT Operating Rule 104.2(d) states:

Employee behavior must be respectful and courteous. Employees must not be any of the following:

d. Quarrelsome

CSXT Operating Rule 104.3(a) & (e) states:

The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities by CSX:

a. Boisterous, profane, or vulgar language; or

e. Behavior that endangers life or property.

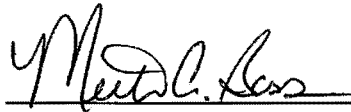
The Board has carefully reviewed the record, and finds no material procedural error in this case. The Carrier argues that the egregious behavior of the Claimant warrants discharge while the Organization contends that the exchange between the Claimant and the Roadmaster were equally loud and offensive. The behaviors of the Claimant and the Roadmaster are not similar; the Roadmaster did not threaten the Claimant. The Board finds that the statements of the Claimant were threats made to his Manager. The Board finds that the Carrier has met its burden of proof and further finds that the Claimant violated the cited rules. The remaining issue is whether or not the penalty imposed was arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case. In labor relations, behavior that destroys the trust relationship between the employer and the employee is often considered a dischargeable offense. In this case, it would be difficult, if not impossible, for the Roadmaster to engage in a close supervisory relationship with the Claimant. Accordingly, discharge would be an appropriate penalty.

AWARD

Claim denied.

ORDER

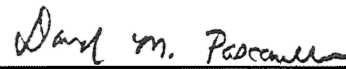
This Board, after consideration of the dispute identified above, hereby orders that an award not favorable to the Claimant be made.



Meeta A. Bass
Neutral



Katrina Donovan
Carrier Member



David Pascarella
Organization Member

Dated at Chicago, Illinois, this 26th day of NOV. 2019.