

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 424

PARTIES)
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TO)
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DISPUTE)
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**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

VS.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. Carrier’s dismissal of Mr. C. Pace for the alleged violation of CSX Policy on Workplace Violence was contrary to the facts and very harsh (System File D91705718/18-37083 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Carrier:

‘... must clear all mention of the matter from Claimant’s personal record, immediately return Claimant to service with rights and benefits unimpaired, compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline (this amount is not to be reduced by earnings from alternate employment obtained by Mr. Pace while wrongfully dismissed). It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline, but not limited to:

1. Straight time for each regular work day lost and holiday pay for each holiday lost, to be paid in the rate of the position assigned to Mr. Dowdy (sic) at the time of removal from service (this amount is not reduce (sic) by earnings from alternate employment obtained by Mr. Dowdy (sic) while wrongfully suspended);
2. Any general lump sum payment or retroactive general wage increase provided in any applicable Agreement that became effective while Mr. Dowdy (sic) was out of service;

- “3. Overtime pay for lost overtime opportunities based on overtime for any positions he could have held during the time Mr. Dowdy (sic) was suspended from service, or overtime paid to any junior employee for work Mr. Dowdy (sic) could have performed had he not been removed from service;
4. Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed.

Once again, all notations of this dismissal should be removed from all Carrier records.’ (Employee’s Exhibit ‘A-4’).”

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 on June 21, 1934. This Board has jurisdiction over this dispute involved herein. Parties to said dispute were given due notice of hearing.

STATEMENT OF FACTS:

Claimant, C. R. Pace, is a ten (10) year veteran who was charged with the violation of CSX Policy on Workplace Violence on August 16, 2018 when he is alleged to have made comments regarding his desire to bring a gun to work and to shoot people. The record reflects that such comments were made in route back to his hotel from work and made in the presence of two (2) other employees. A formal investigation occurred on September 13, 2018. Subsequently, on October 1, 2018, a letter was sent to the Claimant, informing him of his dismissal.

It is the position of the Organization that the Claimant did not violate the Workplace Violence Policy of the Carrier. The Organization asserts that another employee (Ward) was present and corroborated the Claimant’s version of events in which he did not make comments about “bringing a gun to work and shooting people.” Specifically, the Organization further asserts that the lone accuser (Foreman Manns) is insufficient to make a case based on substantial evidence, as required. In sum, the Organization maintains that a disciplinary charge cannot be predicated upon a single uncorroborated accuser. Based upon the above, the Organization concludes that the Carrier has completely failed to establish that a violation has occurred. Accordingly, the Organization reasons that the Carrier failed to meet its burden of proof and establish that the Claimant violated its Policy of Workplace Violence.

On the other hand, it is the Carrier’s position that such a violation comes within the ambit of a Major Offense, which warrants dismissal even upon a first occurrence. The Carrier asserts

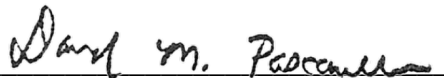
that the Claimant's statements regarding shooting people is particularly troublesome because the Claimant has access and operates heavy machinery that is dangerous and could kill or harm someone, should he be allowed to return to work. In sum, the Carrier concludes that the Claimant was doing a lot more than just blowing off steam, as he described he would bring a gun, put on a silencer, and shoot people. Lastly, the Carrier points out that the Claimant corroborated the Foreman's testimony in regards to his comments regarding his state of mind and mass shootings.


OPINION OF THE BOARD:

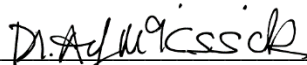
After a careful analysis of the record, the Board finds that the Claimant admitted to Foreman Manns that he understands "why people go on mass shootings." The Claimant also admitted that reflecting back upon his prior statement that "I kind of see where he's [Foreman Mann's] is coming from on that" (Exhibit A at 15-17). Lastly, the Claimant also admitted that he had notice of the Carrier's Workplace Violence Policy in that same exhibit at page 17. Based on the foregoing, this Board finds that this claim must be denied.

AWARD:

This claim is denied.


 David M. Pascarella
 Employee Member
 BMWED-IBT


 John Nilon, Esq.
 Carrier Member
 CSX Transportation Representative


 Dr. A. Y. McKissick, Referee

DATE: February 9, 2021