

PUBLIC LAW BOARD NO. 7163

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

vs.

**NMB Case No. 510
Award No. 510
Organization No. D91700120
Carrier No. 20-91206**

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. M. Smithson, by letter dated December 27, 2019, in connection with allegations that he was in violation of CSX Code of Ethics – Workplace Violence was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive and in violation of the Agreement (System File D91700120/20-91206 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 reduced by earnings from alternate employment obtained by Mr. Smithson while wrongfully dismissed). It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered as a consequence of the discipline. Any general lump sum payment or retroactive general wage increase provided in any applicable Agreement that became effective while Mr. Smithson was out of service;’ (Employees’ Exhibit ‘A-2’).”

JURISDICTION

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act,

as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

FINDINGS

The Carrier hired M.A. Smithson (225185) (hereinafter referred to as 'Claimant') on July 20, 2007. Claimant established and maintained seniority in the Carrier's Maintenance of Way Department. During the time relevant for this dispute, the Claimant was working as a track inspector and had no record of discipline.

On November 10, 2019, while in the breakroom at approximately 0800 hours, it was alleged that Claimant got into a verbal altercation with Trackman Adam Hull regarding Hull's comment to Claimant that management was watching his overtime and to stay "low key" and not make a big deal about overtime opportunities being cut. It is undisputed that the two men were the only individuals present in the room. Hull reported that in response to his comment to Claimant, Claimant got up and told him, "Fuck you, fuck this place" and then walked toward the exit door. Hull provided a written statement on the following day which stated, in part, that Claimant "screamed at me at the top of his lungs and as red faced as the Coke machine 'I HATE EVERONE HERE!!! I WANT TO KILL EVERY MOTHERFUCKER THAT WORKS HERE!!! I WANT THEM ALL DEAD!!!' He then yelled something about ripping faces off and slammed against the refrigerator, walked out the door slamming it as well." (Carrier Exhibit A at 68).

An investigative hearing for this incident was held on December 10, 2019, where Mr. Hull testified to the above-referenced statement. Mr. Hull also testified he expressed concerns to management about working with Claimant because he was volatile, explosive and made comments about killing other people. Following the investigative hearing, the Carrier determined Claimant violated CSX Transportation Code of Ethics-Workplace Violence, assessing the discipline of dismissal, by letter dated December 27, 2019.

The Organization appealed Claimant's dismissal on January 13, 2020. By letter dated February 24, 2020, the Carrier denied the Organization's appeal. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on January 28, 2020. The parties were ultimately unable to resolve the dispute and the matter now comes before this Board for final adjudication.

In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board finds substantial evidence in the record to uphold the Carrier's position regarding the charges against Claimant.

Rule 104.2 requires employees to, among other things, not be quarrelsome. The CSX Policy on Workplace Violence, in relevant part, states, "...We will not tolerate intimidating, threatening, or hostile behavior...."

Claimant admitted that he used profanity and was upset. He denied threatening to kill anyone. The Board finds that Mr. Hull provided competent testimony that he did not feel safe working with Claimant. Specifically, Hull stated, "But when he said what he said about, I want everybody dead, I want to kill everybody here, I'm not taking a chance with my life, and I'm not taking a chance with everybody else's life that works there. Whether he was going to do it or not, I'm not a professional shrink or psychologist to know, so I mean, I did what I was taught to do, we're taught, you know, if somebody says something like that or violence in the workplace, we're supposed to report it immediately." Carrier Exhibit A (Tr. at 24). And later testified, "I don't care if you send him to work the other side of the yard, you do whatever you want to do, but do not put him in the same environment as me. I said, I'm not working with that dude anymore, cause the next time he blows up, I don't want to be anywhere in the vicinity of it." Carrier Exhibit A (Tr. at 31). Based on the totality of the circumstances and the seriousness of the misconduct, this Board finds that the Carrier's decision was not arbitrary, capricious or discriminatory. The Board finds no procedural violations or mitigating factors present to disturb the discipline. Accordingly, the claim shall be denied.

AWARD

Claim denied.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



Ross Glorioso
Labor Member

Dated: 1-11-2023