

**PUBLIC LAW BOARD NO. 7163**

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

**vs.**

**NMB Case No. 514  
Award No. 514  
Organization No. DRA907619  
Carrier No. 19-37986**

**CSX TRANSPORTATION, INC.**

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**STATEMENT OF CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. W. Lardani, by letter dated November 5, 2019, in connection with allegations that he violated CSX Transportation Rules 100.1, 104.2, 104.3(a), CSX Anti-Harassment Policy and CSX Code of Ethics, was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA 907619/19-37986 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 and 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. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.’ (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 W.D. Lardani (“Claimant”), on May 21, 2007. Claimant established and maintained seniority in the Carrier’s Maintenance of Way Department.

During the time relevant for this dispute, Claimant was working in the Bridge and Building (B&B) Department and he had an unblemished disciplinary record.

By letter dated September 30, 2019, the Carrier directed Claimant to report for a formal investigation into allegations that on September 10, 2019, approximately 2300 hours, in the vicinity of Best Western Ashbury Inn, Lagrange, Kentucky, he exhibited behavior that was disrespectful and sexually abusive towards hotel staff.

Following a postponement, a formal investigation was convened on October 16, 2019. Based on the evidence and testimony presented during the investigation, Claimant was found culpable of violating CSXT Operating Rules 100.1, 104.2, 104.3, the CSX Anti-Harassment Policy, and the CSX Code of Ethics, because Claimant exhibited behavior that was disrespectful and sexually abusive towards hotel staff. Consequently, by letter dated November 5, 2019, Claimant was notified of the findings and was dismissed in accordance with the Carrier's IDPAP.

The Organization appealed Claimant's dismissal on November 19, 2019. Thereafter, the dispute was handled according to the ordinary and customary on-property handling process, including the parties discussing the matter on February 18, 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.

The hotel staff complainant provided a written statement that Claimant, after requesting assistance with removing a cricket from his hotel room, while shirtless and in his underwear, made comments to the effect that she should "bend down and look for the cricket" and "I don't want your help. I want to take you to bed." The complainant stated that Claimant later repeated the reference to going to bed with him in front of the complainant's co-worker. While the complainant's statement contained a hearsay account of the events at issue, there is other competent in the record to corroborate the complaint. B&B Mechanic Daniel Deerman testified during the investigation that the morning after the incident in question, while in the truck leaving the hotel, Claimant stated he asked the complainant to "hop into bed with [him]." Tr. at 46. Further, Deerman thought it was strange that Claimant would openly make such statements. Claimant admitted interacting with the complaining individual exactly as she reported but denied making the offensive statements. Significantly, the complainant (a new employee at the hotel) emphasized that she was afraid of Claimant because of his behavior. Based on the totality of the circumstances and the serious nature of the offense, 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