

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 11

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

1. The dismissal of Mr. D. Ferguson for alleged failure to properly secure equipment resulting in damage to a company vehicle on March 16, 2014 was arbitrary, capricious, excessive and in violation of the Agreement (System File 220-SF13C2-142 SKO).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Ferguson shall be afforded the full remedy prescribed in Rule 15D of the Agreement."

FINDINGS:

By notice dated April 1, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had failed to properly secure equipment on March 26, 2013, resulting in damage to a Carrier vehicle. The investigation was conducted, after a postponement, on April 22, 2014. By letter dated May 2, 2014, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier's service. The Organization subsequently filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence supports the finding that the Claimant violated the cited rules, because the Claimant was afforded all elements of due process, because the Claimant was

afforded a fair and impartial investigation, and because the discipline imposed was not arbitrary, capricious, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to sustain its burden of proof, because the Carrier's decision to dismiss the Claimant was unwarranted in that the Claimant was a productive employee with about six years of service for the Carrier, and because the Carrier's decision to dismiss the Claimant was arbitrary and excessive.

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 failing to tie down the stretchers, which eventually slid through a rear glass window shattering it. The Claimant admitted that it was his fault for not checking to make sure that the stretchers were properly secured. The Claimant was properly found guilty of violating Carrier's safety rules and recommended work guidelines. The Claimant stated at the hearing that "... it was my fault for not checking" that it was secured. The Claimant also stated, "... I should have tied them down."

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.

The Claimant's service record for the past thirteen months of his employment

included several critical rule violations for violating track safety procedures, as well as two separate attendance violations, one of them being very serious. Given the seriousness of the offense that the Claimant was responsible for in this case, coupled with the Claimant's previous record, this Board finds that the Carrier did not act discriminatorily, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: November 14, 2016



CARRIER MEMBER
DATED: November 14, 2016