

**PUBLIC LAW BOARD NO. 7529
CASE NO. 112
AWARD NO. 112**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization File: D21002815))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier File: 2015-196960))	

STATEMENT OF CLAIM:

“It is my desire to appeal the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Public Law Board No. 7529. I understand that the Neutral Member of Public Law Board No. 7529 will base his/her decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and the discipline rule of the Maintenance of Way Agreement.”

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 15, 2012, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication.

After a thorough review of the record, and a hearing on this matter held on September 26, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question.

On January 10, 1977, the Carrier hired G. J. Yow, (“Claimant”) as a Trackman located in Nashville, Tennessee. Most recently, the Claimant held the Track Foreman Flagging Assistant position working in the Tallahassee and Midway Florida areas.

From July 26, 2015 through August 12, 2015, Claimant stayed at the Corporate Lodging Hotel (CLC), Howard Johnson Inn located in Midway, Florida. On August 13, 2015, an email was received by the Carrier from Howard Johnson Inn, Owner, Garish Patel (“Patel”) notifying the Carrier that the Claimant will no longer be permitted to stay at the hotel due to Claimant making both sexual and racial comments towards the employees during his stay.

As a result of the above, Claimant was instructed to attend an investigation by letter dated August 26, 2015, in regards to the information received on August 13, 2015, that he made

inappropriate comments and acted inappropriately towards hotel employees, and all circumstances related to. After one postponement, the hearing took place on September 17, 2015. Following the hearing, the Carrier determined the Claimant had violated CSXT Operating Rules 100.1, 104.2, CSX Anti-Harassment Policy, and CSX Ethics Policy. As a result, the Claimant was dismissed effective October 7, 2015. On October 8, 2015, the Claimant retired from CSXT.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization contends that the Carrier failed to comply with Rule 25 of the CBA by not having specific Rule numbers in the Notice of Investigation.

They also objected to receiving only written statements from the hotel management and staff. They say that they should have been able to confront the accusers in person.

They say that the Carrier failed to meet its burden of proof and that the discipline assessed was excessive.

POSITION OF THE CARRIER:

The Carrier says that the Notice of Investigation was sufficient.

With respect to the written statements of the hotel personnel, they say the Carrier made multiple attempts to have Patel and the three Howard Johnson employees attend the hearing. All stated that they would not come due to the fact that they were scared to appear before the Claimant. The Carrier offered to have CSXT police present yet Patel and the three Howard Johnson employees declined the offer. All witnesses spoke directly to Assistant Division Engineer, Nathan Durbin, at length and described the treatment Claimant exhibited to them. Furthermore, all three provided detailed written statements regarding the actions they were subjected to by the Claimant. Since these individuals are not employees of the Carrier, the Carrier says it does not have subpoena power in order to force non-employee witnesses to appear.

With respect to the infractions, they pointed this tribunal to the admissions in the record. Thus, they say, their burden of proof has been met.

With respect to the quantum of discipline, they say that dismissal is the only appropriate outcome.

RESULT:

With respect to the Notice of Investigation, this Board finds that it was sufficient. The Claimant was given enough information to know the case to be met. That is all that is required in such cases, absent a specific CBA provision to the contrary. The parties did not point the Board to any such CBA provision.

With respect to the written statements, this Board agrees that the Carrier has no way to compel attendance of these individuals. As in any other form of arbitration, it is not uncommon to have hearsay evidence presented. The issue of hearsay evidence is typically dealt with not with respect to admissibility, but rather as to weight. In this case, the Board finds that the steps taken by the Carrier were more than reasonable. The written statements are in the record and stand as they were presented.

Turning to the merits of the case, the Board finds that there is sufficient evidence for the Carrier to have met its burden of proof, based on the written statements. These are third party employees with no motivation to lie. The statements of what the Claimant said to them include:

"Looked like your butt winked at me when you walked by."

"You sure do have some nice thick hips."

"You should ask a man what he wants, because it's only one thing."

"Well you should know by now what I really want from you."

"I don't like to stay at places that are owned by people from India or be around them because they were nasty."


"I do not like gays either and that was why I had to leave the Best Western. They were rude and the manager is gay."

The Carrier has met its burden of proof.

The Board finds no reason to interfere with the quantum of discipline assessed in these circumstances.

AWARD:

The claim is denied.



Roger K. MacDougall
Chair and Neutral Member

Dated:

2/17/2017

At: Chicago, IL