

BEFORE PUBLIC LAW BOARD NO. 7529

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION
and
CSX TRANSPORTATION, INC.**

Case No. 147

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. System File D70415416/2017-215556

FINDINGS:

By notice dated November 7, 2016, Claimant S.L. Stevens was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with an October 26, 2016, incident in which the Claimant allegedly was involved in an altercation and made threatening statements to bring harm to an employee. The investigation was conducted, as scheduled, on November 22, 2016. By letter dated December 12, 2016, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being assessed the discipline of time served ending December 12, 2016. The Organization subsequently filed the instant claim on behalf of the Claimant, 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 the Claimant was provided a fair and impartial investigation, because substantial evidence supports the finding that the Claimant is guilty as charged, and because the

discipline imposed was justified under IDPAP. The Organization contends that the instant claim should be sustained in its entirety because Carrier failed to provide the Claimant with a fair and impartial hearing, because the hearing officer was maliciously predisposed, because the Carrier failed to meet its burden of proof, and because the discipline imposed was not justified.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was afforded all of his due process rights throughout the proceeding.

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 violating Carrier Rule 104.2 dealing with employees required to be courteous toward other employees, and the Carrier's policy on workplace violence, which prohibits threats or acts of violence against Carrier employees. The record is clear that the Claimant told another employee that he was going to "kick another employee's ass" and "just bring a machine gun in and be done with it." Although the Claimant denies it, this Board finds that there was sufficient testimony in the record to make it clear that the Claimant did use those words.

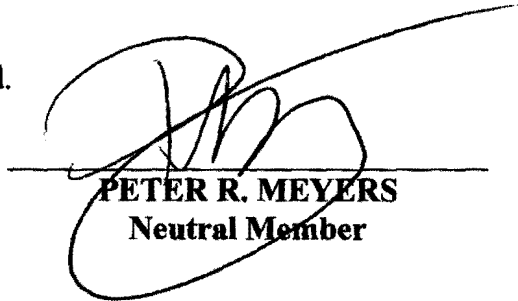
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimant was initially dismissed by the Carrier for his wrongdoing in this case. That dismissal was subsequently changed to a disciplinary suspension for time served. Given that the Carrier exercised leniency in this case and reduced the dismissal, which was issued for a very serious offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the modified discipline to the Claimant. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: April 9, 2018