

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 148

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 D91800817/2017-216417

FINDINGS:

By notice dated November 3, 2016, Claimant D.R. Jarnigan was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with information reaching the Carrier on October 21, 2016, about a July 21, 2016, incident in which the Claimant allegedly displayed a hangman's noose to another employee and subsequently concealed facts when asked about the incident on October 14, 2016. The investigation was conducted, after a postponement, on December 20, 2016. By letter dated January 9, 2017, 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 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 appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant a faire and impartial investigation, because the Carrier failed to meet its burden of proof, because the Claimant was not aware of the noose, and because the discipline imposed was unwarranted.

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.

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 being dishonest and concealing facts under investigation when he denied that he was present during the display of a hangman's noose to another employee who was African American. The record reveals that there was an ethics complaint regarding the display of a noose in which Complainant Kendrick Kelley notified management that the Claimant, as well as other employees, were standing by a truck that had a hangman's noose hanging over the side of the truck. Kelley was called over by one of the employees.

The record reveals that the Claimant initially denied that he saw the noose. However, at the hearing, the Claimant stated, "I mean, I might have noticed a rope or something like that, but never took any, any consideration or anything to it."

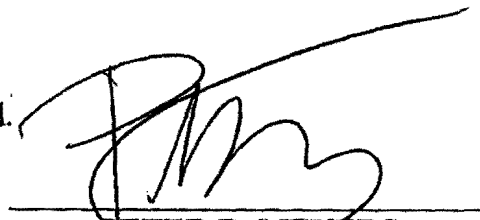
Given that admission and the Claimant's previous denial, this Board cannot find that the Carrier acted improperly when it charged the Claimant with being dishonest.

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.

There is no question in this record that the Claimant was guilty of being dishonest and concealed the facts under investigation in a very serious investigation of racial harassment. Given the seriousness of that offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when terminated the Claimant's employment. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: April 9, 2018