

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 149

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 D91800717/2017-216419

FINDINGS:

By notice dated November 3, 2016, Claimant D.D. Carter 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 participated in displaying 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 fair and impartial investigation, because the Carrier failed to meet its burden of proof, because the Claimant did not see the rope, 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 violating Carrier rules regarding harassment when he and another two employees were standing by a truck with a noose hanging from the side of the truck and called over an African American employee, Kendrick Kelley, and told him to “take a look.” The record contains images of the Claimant standing next to the truck with the noose hanging over the side of the truck. The Claimant stated that he never saw the noose hanging over the truck even though in the photograph he clearly is standing right next to it. Although the Claimant stated that it was not a noose, the record makes it clear that it certainly is.

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 in this case violated the Carrier's zero-tolerance policy relating to harassing racial behavior. Moreover, the Claimant was guilty and concealed facts regarding the investigation. Given that serious offense of which this Claimant was properly found guilty, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it 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