

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 151

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. Carrier File 2017-216422

FINDINGS:

By notice dated November 18, 2016, Claimant D.L. O'Shields was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with a November 9, 2016, incident in which the Claimant allegedly made a derogatory racial slur directed toward a fellow employee. 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 Claimant has heard his co-worker say improper things and believed that he could speak freely, 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 making a derogatory racial slur toward a fellow employee. The Claimant's actions violated Carrier Operating Rules 104.2 and 104.3, as well as the CSX Code of Ethics Anti-Harassment Policy. The Claimant admitted that he made the derogatory statement toward the fellow employee.


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 was guilty of a very serious offense. The Carrier has a zero-tolerance policy against harassing racial behavior. The Claimant's admitted behavior in this case was clearly in violation of that policy. 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