

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 153

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 D91900117/2017-2016424

FINDINGS:

By notice dated December 8, 2016, Claimant M.L. Watson was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with a December 5, 2016, incident in which the Claimant allegedly left equipment running and failed to set the emergency brake, resulting in the equipment damaging an outside party's vehicle, as well as allegedly being dishonest during management's investigation. The investigation was conducted, as scheduled, on January 5, 2017. By letter dated January 24, 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 justified under IDPAP. The Organization contends that the instant claim should be sustained in its entirety because the Claimant did admit to what happened, because the Claimant had an otherwise clean record, and because the discipline imposed was too harsh under all of the relevant circumstances.

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

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 damaging an outside party's vehicle while he was operating a Carrier backhoe and he then fled the scene. The Claimant later denied that the incident occurred and stated that he would challenge it. The Claimant stated that his backhoe did not roll out and remained parked after he left it. Once he was shown videotape from the Exxon station, the Claimant stated that he would "come clean," and he admitted that he left the backhoe unattended and forgot to put on the parking brake and it did roll and strike another vehicle. He also admitted fleeing from the accident scene. The Claimant was properly found guilty of violating Carrier Rules 104.2 and 104.4, which prohibit dishonesty and prohibit the concealment of facts under investigation.

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 clearly dishonest about what had occurred until he was faced with videotape of the actual incident. Dishonesty is often a dischargeable offense, even on the first occasion. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it determined to terminate the Claimant in this case for his dishonesty. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: April 9, 2018