

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 157

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 D21323417/2017-217770

FINDINGS:

By notice dated November 10, 2016, Claimant J.L. Lewis was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with a November 2, 2016, incident in which the Claimant allegedly failed to follow Carrier Environmental and Disposal procedures when he disposed of used oil filters in a trash dumpster at a job site. The investigation was conducted, after three postponements, on February 21, 2017. By letter dated March 10, 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 Carrier failed to afford the Claimant a fair and impartial investigation, because the Carrier failed to meet its burden of proof, because the Claimant was going to return and retrieve the filters, 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 environmental rules when he placed filters in the dumpsters rather than disposing of them in a proper manner. The record reveals that the Claimant placed a number of oil filters in a dumpster rather than in an approved specialized container. Although the Claimant stated that he was going to return to retrieve the filters, there is simply no evidence that he was going to do that and there were photographs that he never returned.

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 which not only

violated the Carrier's rules but subjected the Carrier to costs for remedial action.

However, the Claimant in this case has been employed by this Carrier since 1997. Given that twenty-year history with the Carrier, this Board finds that the Carrier's action in terminating the Claimant's employment for this latest incident was unreasonable and arbitrary. Therefore, we order that the Claimant be reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member

Dated: April 9, 2018