

**BEFORE PUBLIC LAW BOARD NO. 7529**

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

**Case No. 161**

**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 D21900817/2017-220201

**FINDINGS:**

By notice dated February 24, 2017, Claimant B.W. Benton was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with a February 8, 2017, incident in which the Claimant allegedly failed to communicate properly and effectively with the Employee In Charge when obtaining permission to enter an active RCO zone, which resulted in an engine striking a ballast regulator. The investigation was conducted, after two postponements, on March 23, 2017. By letter dated April 11, 2017, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being assessed the discipline of time served. 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, 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 Operating Rules 706.4 and 902.4 when he failed to ensure the safety of his team as they entered the yard to tie up for the day. The Claimant failed to have a proper safety job briefing with the employee in charge, which eventually led to the collision between the train regulator and a train engine. The Claimant admitted to his wrongdoing and that he did not discuss the RCO Zone and did not receive explicit permission to enter the area. The Claimant was not aware of what he was supposed to do that day because he did not have the proper briefing.

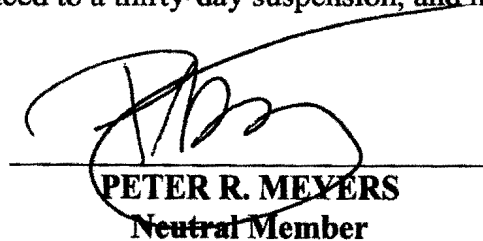
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued a sixty-two-day suspension for his wrongdoing. The record reveals that the yardmaster, who was also involved in the mistakes that led to this incident, was only issued a thirty-day suspension. There is nothing in the record that accounts for the difference in that disparate treatment. Consequently, this Board orders that the Claimant's discipline be reduced to a thirty-day suspension.

**AWARD:**

The claim is sustained in part and denied in part. The sixty-two-day suspension of the Claimant shall be reduced to a thirty-day suspension, and he shall be made whole for the difference in pay.



**PETER R. MEYERS**  
Neutral Member

Dated: April 9, 2018