

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 162

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 D07900717/2017-220202

FINDINGS:

By notice dated February 17, 2017, Claimant J.L. Hailey was directed to attend a formal investigation to determine whether the Claimant had violated Carrier rules in connection with a February 12, 2017, incident in which the Claimant allegedly struck an outside party's vehicle as he was hi-railing across a road crossing. The investigation was conducted, as scheduled, on March 14, 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 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, 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 driving a truck that collided with an outside party's vehicle. The Claimant did receive a citation from local law enforcement for his poor driving. The Claimant's actions clearly violated Carrier Operating Rules 104.3, 712.17, and 712.29.

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 time-served suspension, despite the fact that he had had three serious offenses prior to this and could have been terminated. Since the Carrier afforded the Claimant leniency in this matter, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously with respect to the discipline issued to the Claimant in this case. Therefore, this claim must be denied.

PLB No. 7529
Award No. 162

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: April 9, 2018