

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 164

STATEMENT OF CLAIM:

1. The Carrier's discipline [forty-six (46) day suspension] of Mr. R. Hernandez for the alleged violation of CSXT Rule 712.17 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D91404917/2017-221401 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Hernandez shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.

FINDINGS:

By notice dated April 4, 2017, Claimant was directed to attend a formal hearing and investigation on charges that the Claimant allegedly violated Carrier rules, regulations, and/or policies by allegedly failing to stop and striking a regulator while tramming on-track equipment on March 29, 2017. The investigation was conducted, after a postponement, on April 25, 2017. By letter dated May 11, 2017, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and was being assessed a suspension of time served. The Organization subsequently filed the instant claim on the Claimant's behalf, 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 afforded a fair and impartial investigation, because substantial evidence

establishes the Claimant's guilt, and because the discipline imposed was fully justified under the Carrier's IDPAP. The Organization contends that the instant claim should be sustained in its entirety because the Carrier has failed to meet its burden of proof, and because the discipline imposed was arbitrary and unwarranted.

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 violating Transportation Operating Rule 712.17 when he struck a regulator with his on-track tramming equipment that he was operating on March 29, 2017. The Claimant admitted that he was operating the machine at issue and that he came into contact with a regulator being operated by a Mr. Mata. The Claimant also admitted that Mata had announced that he was stopped. Although the Claimant states that he acted in compliance with the rule, the evidence in the record makes it clear that he did not. The Claimant thereby subjected himself to disciplinary action.

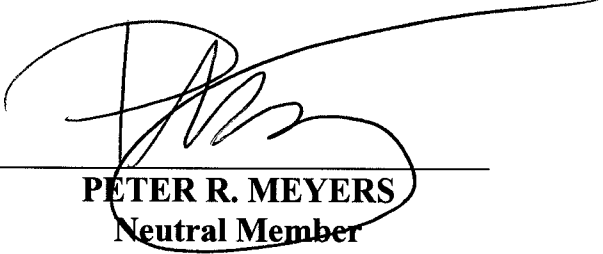
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case was hired by the Carrier in 2013. During the short four years of employment with the Carrier, the Claimant incurred several disciplinary actions. In this case, the Claimant was suspended for a period of forty-six days, which was the

time that he was out of work following the incident. It was a time-served suspension, as well as a one-year disqualification for operating a ballast regulator. Given the previous disciplinary background of this Claimant, and the seriousness of the offense that he was clearly found guilty of in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that forty-six-day suspension to the Claimant. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

DATED: 90/16/18