

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 165

STATEMENT OF CLAIM:

1. The Carrier's discipline of Mr. S. Shockey [forty-three (43) day time served suspension] for the alleged violation of CSX Operating Rules 104.3 and 712.29 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D21326417/2017-222602 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Shockey shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.

FINDINGS:

By notice dated April 20, 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 maintain proper control of his machine at a crossing, and by allegedly striking an OSP vehicle attempting to cross the tracks behind his machine on April 18, 2017. The investigation was conducted, after a postponement, on May 17, 2017. By letter dated June 2, 2017, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, was being assessed a suspension of time served, and was being disqualified as a Ballast Machine Operator for one year. 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 justified under the Carrier's IDPAP. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to comply with the procedural protections in Rule 25, 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 procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

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 Rules 104.3 and 712.29 when he was operating a ballast regulator and failed to maintain proper control of the machine at a crossing and struck an OSP while attempting to cross the tracks behind his machine. The Claimant's supervisor, Mr. Cato, stated that the Claimant's reaction to the incident was that he was upset and he stated that he "screwed up," but he was okay and was not injured. The Claimant in his testimony stated, "Apparently I did not know I had the pressure on the grommet." The Claimant stated that the "machine jumped" when he was operating it.

Once this Board has determined that there is sufficient evidence in the record to

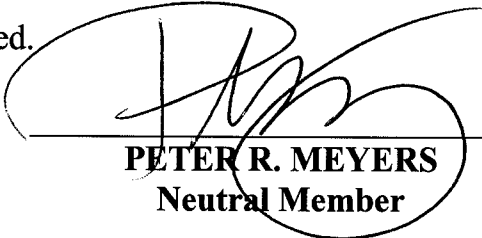
support the guilty finding, we next turn our attention to the type of discipline imposed.

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 had incurred a previous major offense. The Carrier issued the Claimant a forty-five-day time-served suspension in this case, as well as a one-year disqualification from operating the ballast regulator. Given that previous disciplinary background, coupled with the seriousness of this offense, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline to the Claimant. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

DATED: 10/16/18