

BEFORE PUBLIC LAW BOARD NO. 7529

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

Case No. 166

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissal from service) of Mr. S. Barfield for the alleged violation of CSXT Rules 104.1 (3), 104.3, and 104.13 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D01902517/2017-222617 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Barfield shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.

FINDINGS:

By notice dated April 24, 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 sleeping while on duty on April 19, 2017. The investigation was conducted, as scheduled, on May 18, 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 and was being dismissed from the Carrier's service. 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 by

the Claimant's actions. 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 104.1(3), 104.3, and 104.13 when he was found sleeping on the job slumped over with his eyes closed. The Carrier had previously been unable to reach the Claimant. There is a photograph in the record showing the Claimant slumped over and asleep that was described by the Carrier's witness. The Claimant's actions clearly violated the rules regarding staying awake when one is at work.

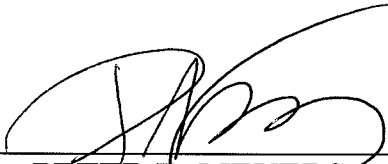
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant, who started work with the Carrier in 2008, had accumulated a very lengthy list of violations since his hire date. He had another major violation and a variety

of other problems during the course of his employment. Given that disciplinary record, plus the seriousness of the charge of sleeping on the job, of which he was properly found guilty, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. For that reason, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

DATED: 10/16/18