

Public Law Board No. 7529

**Brotherhood of Maintenance
Of Way Employees**

VS.

CSX Transportation, Inc.

PARTIES TO DISPUTE

Lamont M. Walton, Referee and Neutral Member
Andrew M. Mulford, Employee Member
Rob Miller, Carrier Member-Dissenting (See Attachment)

Statement of Claim:

“Claim of the System Committee of the Brotherhood that:

- 1. Carrier’s imposition of discipline in the form of a thirty (30) calendar day suspension upon Claimant R. Mosley for the alleged violation of CSXT Operating Rules – General Regulation GR-2, CSX Code of Ethics and Violence in the Workplace Policy was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File 2013-154531).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant R. Mosley shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”*

It is my desire to process the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Special Board of Adjustment No. 7529. In so electing, I understand that the Neutral Member of Special Board of Adjustment 7529 will base his decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and Rule 25 of the Maintenance of Way Agreement.

Findings and Decision:

The Board, based on the entire record, finds that the parties are carrier and employee within the meaning of the Railway Labor Act, as amended, that this Board has jurisdiction over the dispute, and the parties were given due and proper notice of the hearing.

It was charged that on September 27, 2013, at approximately 1934 hours, while in the vicinity of Chelyan, West Virginia, R. G. Mosley, ID No. 629162 (Claimant), during an interview with Claim Agent, Greg Howard, Claimant stated he would have settled a previous incident with another employee by retrieving his gun from his vehicle and shooting him. After testimony and evidence were presented, it was determined Claimant violated CSX Transportation Operating Rule General Regulation, GR-2, CSX Code of Ethics and Violence in the Workplace Policy. He was assessed a thirty (30) days suspension.

On September 27, 2013, Claimant was being interviewed by Mr. Howard, a member of the Carrier's Claims Department about an injury claim. This interview occurred at Claimant's home during off-duty hours. At some point in the conversation, Claimant commented that he should have handled the prior matter differently and then made a remark to the effect that he should have handled the prior incident by using a gun. Thereafter, Mr. Howard concluded the interview and departed Claimant residence.

On September 28, 2013, Mr. Howard returned to Claimant's house and discussed the comments of the previous day. Mr. Howard focused on Claimant's statement regarding a gun and directly asked what he had meant by it. Claimant informed Mr. Howard that the statement had been joking and he did not have a gun in the car.

Regulation GR-2(6) prohibits employees from endangering life or property. The record lacks any evidence that Claimant actually endangered any life or property. In fact, Claimant did not engaged or attempt to engage in any conduct that would endanger life or property. Instead, the record confirms that while Claimant may have made an inappropriate remark, he never took action which placed, or attempted to place anyone or anything in danger. Therefore, the Carrier did not meet its burden and establish by substantial evidence that Claimant violated General Regulation GR-2(6).

Review of the evidence also finds that the Carrier failed to meet its burden and establish by substantial evidence that Claimant violated the CSX Code of Ethics and Violence in the Workplace Policy. The Workplace Policy prohibits any intimidation, acts or threats of violence against company employees or non CSX individuals while doing business with CSX, on CSX property or in CSX sponsored lodging. Claimant was not performing his regular assignment nor was he working overtime. In fact, he was off-duty when the remark was made. Furthermore, Claimant was not doing business with CSX, was not on CSX property, and was not in CSX sponsored lodging when the remark was made. Thus, the Carrier

failed to establish that a violation of the CSX Code of Ethics and Violence in the Workplace Policy occurred.

For this reason, it is concluded that the charge against Claimant for violating CSX Transportation Operating Rule General Regulation, GR-2, CSX Code of Ethics and Violence in the Workplace Policy was not proven by substantial evidence. The Carrier's burden of proof was not met. Therefore, Claimant's discipline is rescinded and the appeal is sustained.

Award:

The claim and appeal is sustained, in accordance with the Findings and Decision.

September 15, 2014
Award Date

Lamont M Walton
Lamont Walton, Referee

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 47, (Case No. 47)

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2013-154531)**

Lamont Walton, Referee and Neutral Member
A. Mulford, Employee Member
R. Miller, Carrier Member - **Dissenting**

CARRIER MEMBER'S DISSENT:

The Majority erred when it minced the words of Carrier's Workplace Violence Policy and Rule GR-2 and erroneously concluded that an employee who stated to a Carrier Officer that he should have settled a prior incident by going to his car, getting his gun and shooting another employee violated neither the Carrier's policy on workplace violence nor endangered another employee. The Carrier's ethics policy regarding workplace violence states:

Workplace Violence – A safe and secure work environment must also be free from violence. Any intimidation, acts or threats of violence will not be tolerated against Company employees or non CSX individuals while doing business with CSX, on CSX property or in CSX sponsored lodging. (Emphasis added.)

During a meeting between the Claimant and a Carrier Claims Agent to discuss official business, the Claimant stated he should have shot another employee involved in the incident leading to his claim. The Claimant admitted making the statement. Despite the substantial evidence contained in the transcript, the Majority asserted that the Claimant was not governed by the Workplace Violence Policy because the meeting took place during off duty hours away from the Carrier's property.

To conclude there is no connection between their conversation and the Claimant's employment with the Carrier is an egregious error. Both participants were Carrier employees and were discussing a claim from an incident involving the Claimant. Regardless of their location, the parties were clearly conducting Carrier business and, as such, were bound by the Carrier's Workplace Violence Policy, which states "... threats of violence will not be tolerated against Company employees ... while doing business with CSX."

The Claimant alleged he offered the threat in jest, but this is not reason enough to determine the Carrier failed to meet its burden of proof. Assuming arguendo the Claimant's

threat was said in jest, threats veiled in the cloak of humor are unacceptable in the workplace and violate Carrier rules.

The Majority's conclusion is not supported by the record and does not comport with the Carrier's obligation to maintain a safe and violence-free workplace. All threats are considered inappropriate, are taken seriously, and must be acted upon by responsible employers. The Carrier concludes the findings are patently erroneous and of no precedent-setting value in any future case. For these reasons, the Carrier respectfully DISSENTS with the Award.