

**PUBLIC LAW BOARD NO. 7599**

**AWARD NO. 121**

**CASE NO. 121**

**PARTIES TO  
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division  
IBT Rail Conference

vs.

**Grand Trunk Western Railroad Company**

**ARBITRATOR:** Gerald E. Wallin

**DECISION:** Claim denied

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed upon Mr. M. Martin, by letter dated December 18, 2020, in connection with allegations that he failed to comply with CN Code of Business Conduct; CN Prohibited Harassment, Discrimination and Anti-Retaliation Policy; USOR General Rule H: Furnishing Information and Conduct; and USOR: Rules, Regulations and Instructions was capricious, excessive, harsh and unwarranted; imposed without due process; without the Carrier having met its burden of proof; and in violation of the Agreement (Carrier's File GTW-BMWED-2021-00004).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Martin shall now be compensated for all lost time, restored to service with all rights and benefits unimpaired and provided the remedy prescribed within Rule 25 of the Agreement."

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed for making a racial slur in reference to the manager of the gas station used to fill his work truck. At the time of the incident in question, claim had almost 18 years of service with no prior discipline for similar conduct. He did have three prior disciplinary entries in his work record within three years of the incident.

Our review of the record does not disclose any procedural deficiencies of significance. Although the Carrier did not honor the Organization's request

for pre-investigation discovery, nothing in Rule 25 requires the magnitude of discovery the Organization was seeking.


On the merits, claimant was overheard to use the term "wetback" to describe the gas station manager. According to the record, two separate Carrier officials heard claimant make the slur. Both deny their hearing could have been misunderstood.


Such a slur is not permitted by Carrier's rules of conduct policies. Purposeful disregard for rules or policies constitutes a Level 4 violation, which calls for dismissal for even a first offense.

Under the circumstances, we do not find the record to provide a proper basis for disturbing the Carrier's disciplinary decision. Therefore, the grievance must be denied.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
John Schlismann,  
Organization Member

  
Patrick Crain,  
Carrier Member

Date: 20 Mar 2013