

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION OF THE
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3, of the June 1, 1999 Agreement, the following will serve as our appeal of discipline assessed to BMW employee J. R. Walker, ID# ****, as a result of the hearing held on April 24, 2006 at Thomasville, GA.

For the reasons stated, plus the objections raised at the hearing, the charge letter and all matter relative thereto should be removed from Mr. Walker's personal record file and Mr. Walker should be immediately returned to the service and be made whole for all losses suffered.

OPINION OF THE BOARD:

Engineering Department employee J. R. Walker ("Claimant") was hired by the Carrier in October 1974. At all times relevant to this issue, Claimant was assigned to a floating Machine Operator position on the Jacksonville Service Lane Work Territory.

On March 23 and 27, 2006, the Claimant was involved in three (3) separate incidents in which he allegedly engaged in "racially-based harassment" against three (3) of his fellow employees. As a result of the alleged incident(s), by letter dated April 10, 2006 the Claimant was instructed to attend an April 24, 2006 formal investigation. Specifically, the Claimant was charged with

“insubordination, conduct unbecoming an employee of CSX Transportation and harassment” due to his alleged racial remarks. Carrier further contended that the Claimant was guilty of “harassing” fellow employee L. Weatherspoon following an incident which allegedly occurred when the duo were assigned as roommates. The investigation was held as scheduled with both Mr. Walker and his representative in attendance. Thereafter, by letter dated May 12, 2006, the Carrier informed Claimant Walker that he was guilty as charged and dismissed from Carrier service.

In a May 17, 2006 appeal to Carrier, Vice-Chairman L. Smith argued that the Carrier was “not successful” in proving the charges lodged against the Claimant. Specifically, Mr. Smith maintained that Director Program Construction L. Houser, who assessed the discipline of dismissal, “obviously did not read the transcript”. The Vice-Chairman further maintained that the hearing officer “kept hammering one of the complainants until he could gain support for the charges”. Finally, the Vice-Chairman opined that: “Mr. Walker has provided 31 years of trouble-free quality railroad service to the Carrier and the treatment issued by the Carrier was un-deserving, unwarranted, capricious and arbitrary”.

In an August 9, 2006 reply to the Organization’s appeal, Carrier contended that the Claimant was afforded a fair and impartial hearing and that all proper procedures were followed. With regard to the merits of the dispute, Carrier maintained that there was “sufficient evidence” to support its finding that the Claimant was guilty as charged. In conclusion, Carrier contended that: “We find nothing that would justify the changing of Carrier’s decision in this case”.

The Organization asserted certain procedural errors, which, it argued, were fatal to Carrier’s case. However, based on the record before us, we find those procedural assertions to be without merit.

Turning to the merits of the dispute, the record reveals that on March 23, 2006, Claimant Walker twice engaged in racially-based harassment of African-American co-workers. The first incident involved the Claimant and fellow employee, Eric Williams, who is an African-American. According to a disinterested observer, as the employees were waiting in one of the Carrier-provided trucks, the Claimant asked Mr. Williams, "several times" if his name was "Roy" or "Boy". Sometime later, the Claimant made additional racist remarks to Mr. Williams, specifically stating that he considered "mixed" African-American/Caucasian children "ugly ; hence African-American co-worker Eric Williams was "the ugly side of the face".

On the night of March 23, 2006, the Claimant was assigned to share a room with African-American co-worker L. Weatherspoon in Carrier-provide lodging. Of note, the Claimant was informed on the previous day that he would be sharing the room with Mr. Weatherspoon. However, the evidence shows that the Claimant refused to open the door and admit Mr. Weatherspoon to the shared room. Mr. Weatherspoon testified credibly that he knocked on the door and tried to gain entry to his room several times, but each time he was "unable to attain Claimant's attention"

Finally, on March 27, 2006, the Claimant was speaking with Foreman A. Gunter while preparing to go to work that day. When African-American coworker D. Davis approached and also asked Foreman Gunter a work related question, the Claimant stated, in words or substance: "You should know better than to interrupt two white men talking".

At the outset, the Organization asserted that the conducting officer at the hearing "badgered" Mr. Williams regarding the Claimant's alleged statements. However, the record demonstrates that Mr. Williams clearly remembered the Claimant making the derogatory remarks, but was unable to remember the exact date upon which the interchange took place. Therefore, the Organization's

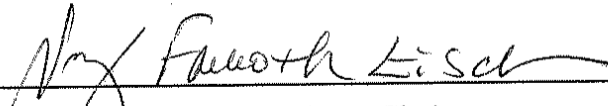
argument in that regard is without merit. With respect to Mr. Weatherspoon, the Organization asserts that the Claimant did not respond to Mr. Weatherspoon's knocking on the door or admit him to the shared room because he "is claustrophobic" and a "heavy sleeper". It is evident the Carrier did not credit those excuses and we find no basis for second-guessing that conclusion. Moreover, according to Foreman Gunter's uncontested testimony, when he informed the Claimant that he would be sharing a room with Mr. Weatherspoon, the Claimant retorted that Foreman Gunter should be the one share a room with Mr. Weatherspoon.

The Carrier has provided clear and convincing evidence that the Claimant engaged in the misconduct with which he was charged and for which a measured quantum of disciplinary action is warranted. Aside from being hurtful and just plain wrong, racist harassment of co-workers is a serious work place offense which could expose an employer to legal liability. On the other hand, we must also take note that the Claimant is a long-time employee with an otherwise relatively clear disciplinary record. On balance, we conclude that modification of the discharge to a severe penalty short of outright termination and a conditional reinstatement might serve as a "wake-up call" that such racist remarks and conduct toward coworkers will not be tolerated by the carrier or condoned by this Board.

Based on all of the foregoing, the discharge penalty is reduced to a suspension without pay for time held out of service; with such reinstatement to employment conditioned upon enrollment and successful participation by the Claimant in work place diversity training.

AWARD

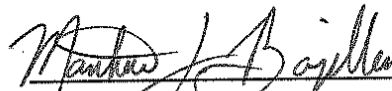
- 1) Claim sustained to the extent indicated in the Opinion.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.
- 3) Jurisdiction is retained for the sole purpose of resolving any disputes over the interpretation or implementation of the remedy.



Nancy Faircloth Eischen, Chairman



Union Member 1-23-08



Company Member 1-23-08