

BEFORE PUBLIC LAW BOARD NO. 6239

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and**

CSX TRANSPORTATION

Case No. 49

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Claimant C. E. Bush as a result of investigation held on September 15, 2003, in regards to Claimant's failure to protect his assignment.

FINDINGS:

The Claimant was employed by the Carrier as a vehicle operator at the time of this claim.

On August 29, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation in connection with his failure to follow instructions and unauthorized absence from his position as a vehicle operator on force 5AD2. The Carrier indicated in the notice that on August 12, 2003, the Claimant had been instructed to proceed to MP SX 1015.0, Dania Siding, from Hialeah Yard, to replace track ties and gage track, but the Claimant did not show up for a lengthy period of time. In addition, the Carrier pointed out that on August 25, 2003, the Claimant reported for work at Hialeah, Florida, and, after a short period of time, abandoned his job without permission. The Carrier charged the Claimant with failure to protect his position on force 5AD2, along with a violation of Carrier Operating Rules 500(1), 501, and 502. The Claimant was to be

withheld from service pending the outcome of the investigation.

After one postponement, the hearing took place on September 15, 2003.

On October 2, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being dismissed from the service of the Carrier.

The parties being unable to resolve their dispute, this matter comes before this Board.

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 failing to follow instructions and unauthorized absence on August 12, 2003, but the Carrier has failed to prove that the Claimant abandoned his job without permission on August 25, 2003.

The record reveals that on August 12, 2003, the Claimant was instructed to proceed to the Dania Siding to replace track ties and gage track and did not show up at that location until approximately 1100 hours. The Claimant apparently had taken his time getting to the location, even stopping for food on that date. That is a violation of the Carrier's rules, and for that the Claimant was properly disciplined.

On August 25, 2003, however, the Claimant reported for work and was issued a letter that indicated that he had been "cut off" as of that date. The Claimant then told the Assistant Roadmaster that he was not feeling well and he went to the doctor. He was told that his absence would not be excused, but he left and went to the doctor because he felt sick. The record reveals that he did go to

the doctor on August 25, 2003, and was treated for urinary retention. However, there is no showing that the Claimant abandoned his job without permission on August 25, 2003, and there is no basis to discipline the Claimant on that charge.

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.

In this case, the Claimant was charged with two separate violations. The Carrier has proven one that occurred on August 12, 2003, but has failed to prove the other one that allegedly occurred on August 25, 2003. The Claimant was terminated as a result of the two rule violations.

This Board finds that there was no just cause for that termination and that the Claimant should be reinstated but without back pay. The record makes it clear that the Claimant had received a cut-off notice on August 25, 2003, and therefore there is no showing in this record that the Claimant would have earned any income from the Carrier between August 25, 2003, and the issuance of this Award. The Claimant's position had been abolished on that date.

Therefore, this Board holds that this Claimant shall be reinstated to employment with the Carrier, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension for the proven wrongdoing that took place on August 12, 2003. When a position becomes

available for which this Claimant is eligible, he shall be placed back on the job after he properly qualifies and is trained.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to employment with the Carrier, but without back pay in accordance with the above award.



PETER R. MEYERS
Neutral Member

Dated: 5/31/01