

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 51

STATEMENT OF CLAIM:

Appeal of the disqualification and suspension issued to Claimant B. W. Kacenski as a result of investigation held on May 6, 2003, for violation of Carrier operating rules.

FINDINGS:

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

On April 17, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with an incident that occurred on the 6XC5 System Curve Patch Team on April 7, 2003, at Elk Run, West Virginia, in which Grove Crane RTC-200102 was involved in an attempt to lift Galion Crane RTC-1529 resulting in damage to the base section of the lifting boom (buckling of the boom). The Carrier indicated in the notice that the Claimant was in possible violation of Carrier Operating Rules and/or Safety Rules and that he was being withheld from service pending the outcome of the investigation.

The hearing took place on May 6, 2003. On May 23, 2003, the Carrier notified the Claimant that he had been found guilty of violating Carrier Safeway

Engineering/Mechanical Rule 5-g and Carrier General Safety Rule 1-b. The Carrier informed the Claimant that he had failed to perform his duties as a foreman in a proper and safe manner and that he had used poor judgment when he attempted to lift the Galion Crane. The Carrier further notified the Claimant that, as a result of its findings, the Claimant was being disqualified from holding any foreman position on any System Production Team for a period of one calendar year beginning April 10, 2003, and that the time he was withheld from service pending the outcome of the hearing would be considered a suspension. The Carrier also informed the Claimant that he would be able to return to service May 27, 2003.

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 violating the Carrier's rules by improperly ordering the lifting of the Galion Crane by the Grove Crane. The Claimant admitted at the hearing that, in hindsight, he should not have done it. There was significant damage that occurred as a result of the improper orders by the Claimant and it is clear that the Claimant was at fault.

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

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capricious.

The Claimant in this case was given a suspension for the time that he was out of service between April 10, 2003, and May 27, 2003. In addition, the Claimant was disqualified from holding any foreman position on any System Production Team for a period of one calendar year beginning on the date that he was withheld from service, April 10, 2003. Given the seriousness of the rule violations that were proven in this case, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Moreover, we find that the punishment fit the wrongdoing in this case. Therefore, the claim will be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member

Dated: _____

5/31/04