

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 182

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant J.A. Ditchie for conduct unbecoming an employee, attempted theft and fraud, as well as gross negligence, as a result of investigation conducted on February 6, 2001.

FINDINGS:

Claimant J.A. Ditchie was employed by the Carrier as a Welder's Helper during the relevant time period.

By letter dated January 22, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in conjunction with the Claimant's alleged attempt to purchase fuel for his personal vehicle with a PHH fuel card on January 9, 2001, at a Mobil station at Watervliet, Michigan, as well as the Claimant's loss of several fuel and/or vehicle repair credit cards. The Carrier charged the Claimant with conduct unbecoming an employee, attempted theft and fraud, as well as gross negligence in the performance of his duties.

The hearing took place on February 6, 2001. On February 23, 2001, the Carrier notified the Claimant that he had been found guilty on all charges, and that he was being assessed the penalty of dismissal from the service of the Carrier, effective immediately.

The Organization filed a claim on the Claimant's behalf, challenging the dismissal.

The Carrier denied the claim and argues that the Claimant is guilty as charged,

emphasizing the Claimant's admission that he did attempt to purchase gasoline for his personal vehicle with a company PHH fuel card. The Carrier additionally asserts that the gas station at which this fuel was purchased is located approximately five miles off the normal route that the backhoe would travel between Benton Harbor and Watervliet, Michigan. Moreover, the gas station is either owned or managed by a member of the Claimant's family, making the receipt highly suspect. The Carrier contends that the Claimant is a short-term employee, and there are no extenuating circumstances. The Carrier maintains that the Claimant's dismissal from service was justified.

The Organization argues that the Claimant made an error in trying to recover reimbursement of money that he spent for backhoe fuel, doing so in a manner that other employees had advised him was acceptable. The Organization asserts that the Claimant's actions were not fraudulent, and that he should not be dismissed for actions that have been acceptable with respect to his co-workers with many years of service. The Organization maintains that the Claimant acknowledged his error and has apologized for his actions. The Organization further argues that with respect to the lost credit cards, these were lost while the vehicle was in the shop. The Organization emphasizes that a number of people had access to the vehicle, and the Claimant did not have complete control over the vehicle. The Organization argues that the Carrier failed to successfully prove any of the charges against the Claimant, and it contends that the Claimant should be returned to service and paid for all lost wages and benefits.

The parties being unable to resolve the issues, 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 conduct

unbecoming an employee, attempted theft, fraud, as well as gross negligence. The Claimant obviously utilized bad judgment in making some decisions which we find entitled the Carrier to issue discipline to him in this case.

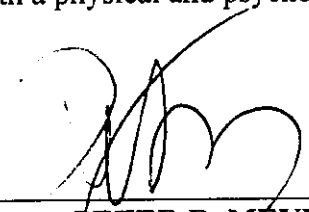
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Although there was no question that the Carrier had the right to issue discipline to the Claimant in this case, this Board believes that the dismissal of the Claimant by the Carrier was unreasonable given the circumstances. Consequently, we order that the Claimant be returned to work without back pay. The period that the Claimant was off work shall be considered a lengthy disciplinary suspension. Moreover, this Board finds that the Claimant should not be returned to work until he successfully passes both a physical and psychological examination, as well as a drug screening by the Carrier that are normally given to employees returning to work from discipline or from injuries.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension. Moreover, before the Claimant is returned to work, he shall be

required to successfully pass both a physical and psychological examination, as well as a drug screening.



PETER R. MEYERS
Neutral Member

Dated: June 3, 2002