

BEFORE PUBLIC LAW BOARD NO. 5896

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION**

Case No. 191

STATEMENT OF CLAIM:

Appeal of the dismissal of G.J. Weimer.

FINDINGS:

At the time of the events leading to this claim, the Claimant was employed by the Carrier as a maintenance of way employee.

On May 16, 2003, the Carrier conducted a formal investigation of charges that on or about April 25, 2003, the Claimant engaged in conduct unbecoming an employee, violated the Carrier's Policy Statement on Harassment, violated Operating Rules 500 and 501, and was excessively absent. As a result of this investigation, the Claimant was found guilty as charged, and he was dismissed from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's dismissal of the Claimant. The Carrier denied the claim.

The Carrier contends that the testimony and evidence submitted during the investigation supports the Carrier's determination that the Claimant is guilty of the charges. The Carrier argues that the Claimant's behavior, and his consistent failure to protect his assignment, demonstrates a blatant disregard for responsibility.

The Carrier contends that the instant claim should be denied in its entirety.

The Organization contends that there was no just cause for the dismissal of the

Claimant and that he should be reinstated with full back pay and other benefits.

The parties being unable to resolve their dispute, this matter came 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 that the Claimant was guilty of excessive absenteeism, as well as conduct unbecoming an employee of the railroad. The record reveals that the Claimant had threatened other employees, telling them that he was going to "fix his ass." There is other evidence that the Claimant acted in a boisterous manner and caused disruption with the other employees.

With respect to the absenteeism issue, there was testimony that was unrebutted that the Claimant had been absent more than fifty percent of his assigned days. The Claimant failed to protect his assignment on at least forty-three of the eighty-one work days between January and April of 2003. That constitutes excessive absenteeism.

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.

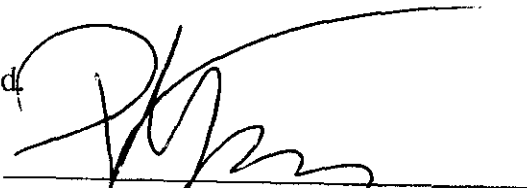
The Claimant in this case rarely came to work; and when he did, he often acted in a manner that was unbecoming an employee of the CSX Railroad. He had previously received a coaching and a ten-day suspension for excessive absenteeism. Given his relatively short seniority, he was employed by the Carrier in 1996, this Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonable,

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arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 2/28/04