

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 12

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant M. K. Hurst as a result of investigation held on February 13, 2001, in connection with Claimant's alleged violation of Carrier Rule 26(a) of the Agreement and the General Regulations.

FINDINGS:

Claimant M. K. Hurst was employed by the Carrier as a bridge mechanic at the time of this claim.

On January 31, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his being absent without permission and for unknown reasons beginning January 9, 2001, without having notified his supervisor. The Carrier charged the Claimant with being absent without permission, abandoning and/or failing to properly protect his assignment, as well as failure to notify his supervisor of his absence as prescribed by Rule 26(a) of the Agreement and the General Regulations. The Claimant was withheld from service pending the investigation.

The hearing took place on February 13, 2001. On March 2, 2001, the Carrier

notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal.

On March 12, 2001, the Organization filed a claim on behalf of the Claimant, arguing that the Claimant missed work due to health problems beyond his control. The Carrier denied the claim.

The Carrier argues that the Claimant was previously disciplined for failing to protect his assignment and that he was fully aware of the importance of protecting his position as well as his responsibility to arrange for authority to be absent with his supervisor. The Carrier further argues that the Claimant failed to provide any documentation or credible evidence of the necessity of his absence.

The Organization argues that the Claimant was under a doctor's care for a neck injury at the time of the incident and he was required to miss work. The Organization maintains that the Claimant has over thirty years of service with the Carrier and that this incident was a result of poor communication between the Claimant and his supervisor. The Organization contends that the Claimant was indeed suffering from health problems on the dates in question and that the Claimant's doctor's report supports that assertion. The Organization claims that Rule 26(b) allows for missing work when the reason is due to sickness or disability, and the Claimant suffered from a neck injury which limited his ability to work during the dates of January 9, 2001, through January 29, 2001.

The parties being unable to resolve the issues, 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 to support the finding that the Claimant was guilty of being absent without permission for a lengthy period beginning on January 8, 2001. On that date, the Claimant requested time off to go to a doctor. However, the Carrier did not hear from the Claimant for a number of days after that. On the 18th of January, the Carrier informed the Claimant that his absence and failure to notify the Carrier were unacceptable. On that date, the Claimant informed the Carrier that he was going to have some tests on his neck which was giving him a problem. However, the record is clear that the Claimant did not keep the Carrier informed of his whereabouts, nor did he inform the Carrier in advance that he would not be coming in to work on a number of days during that period.

The Carrier rules require that employees protect their assignment and notify their supervisors of an absence as soon as possible. The record is clear that the Claimant failed to live up to the requirements of Rule 26(a).

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 action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case has been employed by the Carrier since July of 1969. During that thirty-one year period, the Claimant's record has not been perfect, but it is

still a lengthy period of service for which this Board has great respect. Moreover, it is clear from the record that there was a failure of communication between some of the members of supervision and the Claimant. The Claimant believed that the Carrier was well aware of his neck and shoulder problems, and the Carrier admits that it knew he was being treated for those problems, but argues that the Claimant failed to live up to the requirements of the rules by keeping the Carrier apprised of his whereabouts and letting supervision know whether or not he would be coming in to work.

Given that lengthy thirty-one years of seniority, this Board finds that the Carrier acted unreasonably when it terminated the Claimant's employment permanently. This Board finds that the Claimant should have been issued a lengthy disciplinary suspension for his wrongdoing in this case. The Claimant's record reveals that he had previously received a warning letter for being absent without permission in 1996, and he also received a six-month suspension for an unauthorized absence due to incarceration in 1998. Given that record, we find that the Carrier had just cause to issue some severe discipline to the Claimant, but this Board believes that there was no just cause for the discharge.

Consequently, this Board orders that the Claimant shall be reinstated on March 2, 2002. The one-year period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension. Moreover, the Claimant must be able to pass the Carrier's physical examination before he is actually returned to service.

AWARD:

The claim is sustained in part and denied in part. This Board finds that there was no just cause for the discharge of the Claimant. However, the Board had just cause to issue the Claimant a one-year disciplinary suspension. Therefore, this Claimant shall be returned to service, but without back pay on March 2, 2002.


PETER R. MEYERS
Neutral Member