

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 15

STATEMENT OF CLAIM:

- (1) The dismissal of J. E. Mathias on May 26, 2000, on charges of alleged fraud, negligence, and false reporting in connection with an injury/incident report he completed on March 8, 2000, was without just and sufficient cause, unwarranted, and in violation of the Agreement (System File G26702900/12 (00-0388)).
- (2) As a consequence of the violation referred to in Part (1) above, J. E. Mathias' record shall be cleared of the charges leveled against him and he shall be "reinstated and paid for all pay and benefits lost as a result of these charges."

FINDINGS:

Claimant J. E. Mathias was employed by the Carrier as a track foreman at the time of this claim.

On March 15, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts in connection with his employee incident report that he completed on March 8, 2000. The Carrier charged the Claimant with fraud, negligence, and false reporting.

After several postponements, the hearing took place on May 8, 2000. On May 26,

2000, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal.

On May 31, 2000, the Organization filed a claim on behalf of the Claimant, arguing that the Carrier did not prove the Claimant's alleged guilt and requesting that the Claimant be reinstated and paid for all pay and benefits lost as a result of the charges. The Carrier denied the claim.

The Carrier argues that the Claimant failed to make immediate report of his alleged on-duty injuries to his supervisor as required by Carrier rules. The Carrier contends that no one saw the Claimant injure himself, and he made no injury report for over seven months after the alleged incident. The Carrier claims that sufficient evidence was developed at the hearing and that the Claimant fully admitted providing vastly different dates as to when the incident occurred. The Carrier maintains that the Claimant falsified the on-duty injury report as a means of receiving compensation for which he would not otherwise have been entitled. The Carrier also argues that the charge letter was sufficiently precise to put the Claimant on notice that the statements made by him in his incident report were alleged to be fraudulent and false. The Carrier maintains that no procedural violation is present in this matter and there is no reason to vacate the assessment of discipline.

The Organization argues that the Carrier's failure to provide the Claimant with notice of the exact offense against him clearly prejudiced his ability to formulate a proper

defense against the serious charges leveled against him, thereby violating Rule 25. The Organization maintains that an injury did occur but that the Claimant merely could not remember the date of the injury. The Organization argues that the Claimant was not charged for the wrong date being put on the accident report, but was charged for fraud and false reporting. The Organization contends that the evidence gathered at the hearing did not prove that the Claimant was guilty of fraud and falsifying an injury. In fact, the Claimant's testimony was not disputed nor refuted by the Carrier's witnesses during the investigation. The Organization asserts that the Claimant's failure to remember a date does not warrant dismissal, especially since he has been a Carrier employee for over twenty-five years. In addition, the Organization claims that the Claimant was disciplined not for a proven rule violation, but on the mere fact that he sustained an injury.

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 falsifying an injury report. The Claimant filed the report after he had been examined by a doctor in March of 2000. The Claimant alleged in his reports that he had suffered an injury some time in 1999 between July 16 and November 18. The Claimant alleged that he had been struck by a rock on or about July 30, 1999, and that caused him to have a herniated cervical disk. There is simply insufficient evidence to support the Claimant's report and it is also clear that he did not make an immediate report of the

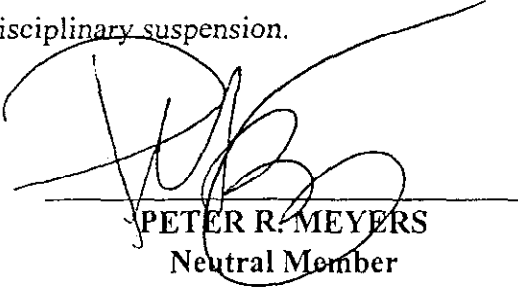
alleged on-duty injury as required by the Carrier's rules.

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.

This type of proven behavior on the part of an employee usually leads to termination. However, this Claimant has worked for the Carrier for over twenty-six years and has a completely clean work record. Given that lengthy service, with an unblemished record, this Board finds that the Carrier acted unreasonably when it terminated the Claimant's employment. Therefore, we hereby reinstate the Claimant to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension for his serious wrongdoing. It is our hope that the Claimant will now return to his earlier ways of abiding by all of the Carrier rules.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member