

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 21

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant T. T. Thomas as a result of investigation held on December 4, 2001, in connection with Claimant's alleged failure to perform his duties properly and in a safe manner, destruction of Carrier property, and unauthorized use of a Carrier vehicle on November 8, 2001.

FINDINGS:)

Claimant T. T. Thomas was employed by the Carrier as a track foreman at the time of this claim.

On November 20, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with an incident which occurred near Okeechobee, Florida, on November 8, 2001, while the Claimant operated a Carrier vehicle, resulting in damage to the Carrier vehicle. The Carrier charged the Claimant with failure to perform his duties properly and in a safe manner, destruction of Carrier property, and unauthorized use of a Carrier vehicle. The Claimant was withheld from service pending the investigation.

The hearing took place on December 4, 2001. On December 21, 2001, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal.

The Organization thereafter filed a claim on behalf of the Claimant, arguing that the

charges be removed from the Claimant's personnel file and that he be immediately returned to service with pay. The Carrier denied the claim.

The Carrier argues that the Claimant admitted that he was responsible for the Carrier vehicle in question on November 8, 2001, and that his actions resulted in damage to the vehicle. In addition, the Carrier argues that the Claimant admitted that he acted alone when he removed damaged components of the Carrier vehicle with a torch without authorization.

The Organization argues that the Carrier's charge letter was vague because it failed to identify what incident occurred on the date in question. In addition, the Organization argues that there was no mention in the charge letter of any rule violations.

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 failing to perform his duties properly and in a safe manner, of destroying Carrier property when he removed parts of a Carrier vehicle with a torch without authorization, and unauthorized use of a Carrier vehicle. The record reveals that the Claimant admitted committing most of the offenses, although he had an inadequate explanation for all of it.


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.

Given the relatively short seniority of this Claimant when combined with the seriousness of the offenses that the Claimant committed, this Board cannot find that the Carrier acted

unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 3/10/08