

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 24

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant D. E. Crossland as a result of investigation held on February 28, 2002, in connection with Claimant's alleged unauthorized absence and falsification of Carrier records in an attempt to conceal the absence. File No. C2011642.

FINDINGS:

Claimant D. E. Crossland was employed by the Carrier as a bridge tender at the time of this claim.

On February 11, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with his unauthorized absence from his position of second trick bridge tender at the St. Lucie Canal Bridge on February 5, 2002, and falsifying his time sheet for that date. The Carrier charged the Claimant with the possible violation of Operating Rules 500 and 501, as well as the possible falsification of his logbook on February 5, 2002, when he logged passing trains during his absence.

The hearing took place on February 28, 2002. On March 12, 2002, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of dismissal effective that date.

The Organization thereafter filed a claim on behalf of the Claimant, challenging the dismissal. The Carrier denied the claim.

The Carrier maintains that the Claimant was not at his regularly assigned position on

February 5, 2002, yet the Claimant posted various inaccurate time entries in the logbook of a boat or train passing his position on that same date. The Carrier points out that many of the Claimant's logbook entries are incorrect and, therefore, the Carrier argues that the Claimant falsified his records. The Carrier argues that the Claimant entered estimated times in the logbook, but is required to enter actual times. The Carrier maintains that the Claimant never received permission to be absent from his position on the date in question. The Carrier argues that because the Claimant failed to contact his supervisor advising him that he was sick, the Carrier was unable to arrange to have someone take over the Claimant's duties. The Carrier contends that the Claimant's position is important as it involves controlling river and railroad traffic, and no one took over the Claimant's position because the Claimant failed to notify the Carrier of his situation. The Carrier points out that the Claimant's supervisor's cell phone was available to the Claimant, and the Claimant was responsible for notifying his supervisor of the circumstances on February 5, 2002.

The Organization argues that the Claimant was not provided a fair and impartial investigation. The Organization points out that it was unable to examine the Carrier officer who issued the charge letter to the Claimant. The Organization also contends that the Claimant had worked his position late on many occasions before yet never made claim for his services; however, on February 5th, the Claimant left work early because he was sick and the Carrier unjustly dismissed him from service without investigating the Claimant's illness. The Organization further argues that the logbook contained inaccurate entries because when the Claimant realized he was ill, he called his dispatcher for estimated times of arrival and entered

them as such in the logbook. The Organization maintains that the Claimant later changed the entries to the correct times, which is not uncommon. The Organization contends that it is a common practice for bridge tenders to contact their dispatchers and obtain estimated times. The Organization maintains that the Claimant did not want to deceive the Carrier, but merely wanted to keep the paperwork in order before he left as a result of feeling ill. The Organization claims that the Claimant attempted to contact a Carrier employee to fill his position, but was unable to do so. The Claimant also did not notify his supervisor because the Claimant was unable to and also because he was instructed by his supervisor not to bother him and to handle situations on his own. However, the Claimant's dispatcher knew that the Claimant left his position. The Organization contends that the Carrier did not attempt to contact the Claimant by telephone to inquire as to his whereabouts. The Organization claims that the Claimant obtained a letter from his doctor explaining his illness on February 5, 2002.

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 unauthorized absence from his position of second trick bridge tender at the St. Lucie Canal Bridge on February 5, 2002, and falsifying his time sheet. The record is clear that the Claimant's supervisor arrived at the Claimant's work location during his trick, and the Claimant was not there. Moreover, upon checking the times of the various passages at the bridge, the Carrier was able to demonstrate that the Claimant falsified the time sheet.


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 extremely short tenure of this employee, when coupled with the seriousness of the wrongdoing of which the Claimant was proven guilty, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 5/08/02