

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 31

STATEMENT OF CLAIM:

Appeal of a ten-day actual suspension issued to Claimant L. J. Dichristopher as a result of investigation held on January 8, 2003, in regards to Claimant's alleged failure to perform his duties as a Foreman.

FINDINGS:

The Claimant was employed by the Carrier as a Foreman at the time of this claim.

In November 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts in connection with the Claimant's failure to perform his duties as a Foreman on November 13, 2002. The Carrier alleged that the Claimant failed to properly repair a joint on Track 1, MP 2.2, on the Chicago Line as instructed by R. F. McCartney, Roadmaster, on November 13, 2002. The Carrier charged the Claimant with violations of NORAC Operating Rules, General Rule B, CSX Engineering Manual, Sub Parts 53 and 53.1, and Federal Railroad Administration Track Safety Standards, Part 213.53.

After postponement, the hearing took place on January 8, 2003. On January 28, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a ten-day actual suspension effective fifteen days from the Claimant's receipt of the Notice of Discipline.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the record in this case, and we hold that the Carrier has

presented sufficient evidence to support that the Claimant was guilty of failing to perform his duties as Foreman on Wednesday, November 13, 2002. The record is clear and the Claimant admits that he failed to properly repair a joint on Track 1, MP 2.2, on the Chicago Line as he was instructed to do by his Roadmaster. The Claimant states that he was only supposed to tamp joints and check mud spots on Track 1 and that he was not supposed to check the gage of the track. However, he also admitted that part of the standards are "ensuring that the gage is proper at those locations."

The Carrier has presented its Engineering Department Field Manual, which states clearly that "gage shall be changed by suitable adjustment of the rail opposite the line rail. If necessary, track can be brought to proper gage by bringing the line rail into proper alignment."

Moreover, the Carrier has presented the Track Safety Standards, which calls for certain limits on the gage of the track. The General Safety Rules of the Engineering and Mechanical Departments state, "We have the right and responsibility to make decisions based on experience, personal judgment, and training." The Claimant in this case is a Track Foreman who has been with the Carrier for nearly thirty-four years. He stated at the hearing that "... we usually, if we see a spot that needs gaging, we'll do it. We'll go out of our way and gage it, you know, but this looked good."

Given the fact that the Claimant knew his responsibilities and that the track clearly needed gaging, his defenses are inadequate to overcome the fact that he failed to perform his duties as Foreman on the date in question.

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 record reveals that the Claimant had previously received a ten-day suspension in January of 2001. Given the seriousness of this offense and the fact that the Claimant has had lengthy seniority, this Board cannot find that the ten-day suspension issued for this offense was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 4/23/03