

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 37**

**STATEMENT OF CLAIM:**

Appeal of the dismissal issued to Claimant S. R. Clackler as a result of investigation held on March 12, 2003, in regards to allegations of sexual harassment that the Claimant engaged in beginning November 2002 and continuing through early 2003, as well as the Claimant's disregard of instructions to abstain from such conduct.

**FINDINGS:**

The Claimant was employed by the Carrier as a Bridge Department Mechanic at the time of this claim.

On February 28, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with a letter the Carrier received from the Manager of the Diamond Head, Mississippi, Ramada Inn on February 19, 2003, that was a sexual harassment complaint about several telephone calls that the Claimant had made to the Manager beginning in November 2002. The Carrier further informed the Claimant that it had also received a sexual harassment complaint from the Manager of the Shoney's Inn at Tillman's Corner, Alabama, concerning conversations that the Claimant had with the Manager and other female employees. In addition, the Carrier indicated that on February 27, 2003, it had instructed the Claimant to abstain from contacting the individuals involved

with the sexual harassment complaints and that he had disregarded those instructions by contacting those individuals on the same date that he was informed not to. The Carrier charged the Claimant with conduct unbecoming an employee, violation of the Carrier's Policy Statement on Harassment, as well as violation of Carrier Operating Rules 501(4) and (8). The Claimant was withheld from service pending the outcome of the investigation.

The hearing took place on March 12, 2003. On April 1, 2003, the Carrier informed the Claimant that harassment and deliberate disobedience of specific Carrier instructions would not be tolerated. The Carrier notified the Claimant that he had been found guilty of all of the charges brought against him and that he was being terminated effective that date.

The parties being unable to resolve their dispute, this matter comes 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 that the Claimant was guilty of harassment and disobeying specific instructions regarding not making further telephone calls to the hotel employees. The record is clear that the Claimant had been warned that there had been complaints about his telephone calls and he should not make any more. The Claimant continued to make telephone calls despite his being ordered not to do that. The women at the hotel had complained of his telephone calls and, although they may not have taken place when the Claimant was working, clearly they reflected on the Carrier.

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.

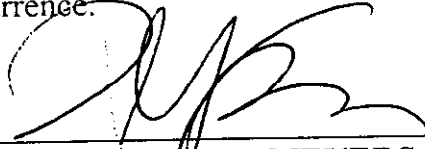
The Claimant was guilty of a very serious rule violation. However, the record also reveals that the Claimant has been employed by the Carrier since 1980 and his only discipline since then has been two ten-day suspensions that were issued in 1987 and 1989. The Claimant was awarded the ten-year service pin in 1990 and, since that time, had received no discipline until this present occurrence.

Given that lengthy seniority, this Board finds that the Carrier acted unreasonably by terminating the Claimant's employment. Although we recognize how serious the Claimant's behavior was in this matter, we believe that there was just cause for a lengthy suspension but not for dismissal. Therefore, we order that the Claimant be reinstated to service, but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension. The Claimant shall also receive a written warning, making it clear to him that he should no longer engage in this type of behavior in the future or he will be subject to discharge.

**AWARD:**

The claim is sustained 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. The Claimant shall also be issued a written warning to refrain from this type of wrongdoing in the future or face discharge on the next occurrence.

  
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**PETER R. MEYERS**  
Neutral Member

Dated: 12/18/03