

**BEFORE PUBLIC LAW BOARD NO. 6239**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 41**

**STATEMENT OF CLAIM:**

Appeal of the thirty-day suspension issued to Claimant R. F. Fountain, Jr., as a result of investigation held on April 22, 2003, in regards to Claimant's violation of Carrier On-Track Workers Rules 600 and 609, along with Carrier Safe Way Rule E-7(b).

**FINDINGS:**

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

On April 8, 2003, the Carrier notified the Claimant to appear for a formal investigation in connection with a main line switch that he had used on March 24, 2003, on the PD subdivision, MP 00K 607.2, Flomaton scale track, to clear up the Loram Ballast Cleaner BC-15 that was lined for movement into the siding when he had reported clear of his 704 track authority. The Carrier indicated that as a result of the Claimant's action, the first train through, Q-606-24, proceeded into the siding, stopping short of the derail and the Loram Ballast Cleaner. The Carrier charged the Claimant with violation of Carrier On-Track Workers Rules 600 and 609, along with Carrier Safe Way Rule E-7(b).

The hearing took place on April 22, 2003. On May 9, 2003, the Carrier

notified the Claimant that due to his failure to provide protection for the Loram Shoulder Cleaner, he had been found guilty of all charges and was being issued discipline of a thirty-day actual suspension beginning May 12, 2003, and continuing through June 10, 2003. The Carrier informed the Claimant to return to work on June 11, 2003.

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 to support the finding that the Claimant was guilty of improperly lining up the switch on April 22, 2003. It is clear from the record that it was the Claimant's responsibility to make sure that the switches were properly lined so that the Shoulder Cleaner had the proper protection. The record revealed that at the time in question, the switch was not properly lined and it was the Claimant who was charged with the responsibility of making sure that it was.

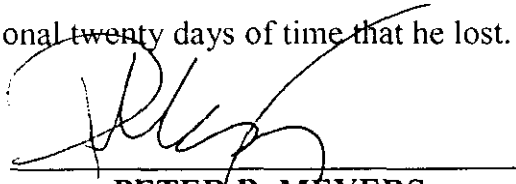
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case began his service for the Carrier in 1980. He had no previous discipline in his record over the twenty-three years of his service to

the Carrier. Given that service record, this Board finds that it was unreasonable and arbitrary to issue the Claimant a thirty-day suspension for this infraction. We hereby order that the thirty-day suspension be reduced to a ten-day suspension and the Claimant be made whole for the additional time that he was off.

**AWARD:**

The claim is sustained in part and denied in part. The Claimant's thirty-day suspension is hereby reduced to a ten-day suspension, and the Claimant shall be made whole for the additional twenty days of time that he lost.

  
**PETER R. MEYERS**  
Neutral Member

Dated: 12/23/03