

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 46

STATEMENT OF CLAIM:

Appeal of the thirty-day suspension issued to Claimant L. W. Baumann as a result of investigation held on September 4, 2003, in regards to Claimant's insubordination and failure to report for service.

FINDINGS:

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

On August 19, 2003, the Carrier issued a notice informing the Claimant to appear for a formal investigation in connection with his alleged insubordinate behavior and his failure to report for service at a derailment site in Queensgate Yard on August 15, 2003, as directed by Assistant Roadmaster Ken Robertson at approximately 1450 hours. The Carrier charged the Claimant with conduct unbecoming an employee and violation of Carrier Operating Rules 500 and 501.

The hearing took place on September 4, 2003. On September 15, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a thirty-day suspension effective August 18, 2003.

The Claimant was eligible to return to work on September 18, 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 conduct unbecoming an employee in violation of Carrier Rules 500 and 501 when he was insubordinate and failed to report for service at a derailment on August 15, 2003.

The record reveals that Assistant Roadmaster Ken Robertson gave the Claimant specific orders to report to help out with the derailment, and instead the Claimant proceeded to leave the worksite. That behavior on the Claimant's part constitutes insubordination and failure to report. We find that that behavior is in violation of Carrier Rules 500 and 501.

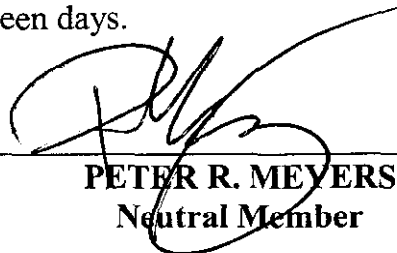
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The record reveals that the Claimant in this case has been employed by the Carrier for nearly thirty years. His work record has been very good, with only a few minor problems, none of which occurred in the past twenty years. Despite the fact that insubordination is often a dischargeable offense, given the Claimant's previous superior record over nearly three decades, this Board must find that even the thirty-day suspension was unreasonable given that excellent work record. We

hereby order that the thirty-day suspension be reduced to a fifteen-day suspension and that the Claimant be made whole for the additional fifteen days. The fact that we are taking this action should not indicate to the Claimant that his behavior was not wrong. Insubordination is very serious, but it is only because of his extremely long service to the Carrier that this Board believes that a thirty-day suspension was excessive under the circumstances and did not constitute progressive discipline.

AWARD:

The claim is sustained in part and denied in part. The thirty-day suspension shall be reduced to a fifteen-day suspension, and the Claimant shall be made whole for the additional fifteen days.



PETER R. MEYERS
Neutral Member

Dated: 4/30/04