

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 64

STATEMENT OF CLAIM:

Appeal of the thirty-day actual suspension issued to Claimant M. J. Korman as a result of investigation held on April 5, 2006, in regards to Claimant's alleged conduct unbecoming a Carrier employee, being argumentative and insubordinate, and failure to follow instructions in violation of Carrier Operating Rules General Rule A and General Regulations GR-2 and GR-3.

FINDINGS:

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

On March 24, 2006, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place his responsibility, if any, in connection with his becoming argumentative on the telephone when given instructions concerning the operation of Carrier Vehicle 501378 and his refusal to follow specific and direct instructions issued by Engineer T. A. Palleschi while in the Hump Building at Dewitt Yard on March 17, 2006. The Carrier charged the Claimant with conduct unbecoming a Carrier employee, being argumentative and insubordinate, and failing to follow instructions in violation of Carrier Operating Rules General Rule A and General Regulations GR-2 and GR-3.

The hearing took place on April 5, 2006. On April 22, 2006, the Carrier

notified the Claimant that he had been found guilty of all charges and was being issued discipline of a thirty-day actual suspension beginning May 15, 2006, up to and including June 13, 2006.

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 violating General Regulation GR-2 when he acted in an uncivil and discourteous manner when dealing with his supervisors on March 17, 2006. The record reveals that the Claimant engaged in a shouting match with his supervisors and failed to promptly respond to orders by the supervisors that he take certain action.

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 was issued a thirty-day suspension for his wrongdoing. Although the record reveals that the Claimant did act in violation of the Carrier rules by failing to promptly respond to a direct order from a supervisor, it is also true that the Claimant finally did obey the order and he did not engage in any altercation or other more serious insubordinate activity which justified the


lengthy suspension. There is no question that this Claimant should be disciplined and instructed that the workplace is not a “debating society” and that he should promptly follow orders. In this case, the Claimant made the supervisor issue him a direct order three times before he finally obeyed. However, it is also true that this Claimant did not violate the more serious aspects of the Carrier regulation which prohibits boisterous or vulgar language, entering into altercations, playing practical jokes, being dishonest or immoral, and making false statements. This Board is of the opinion that based on the record, the Carrier’s issuance of a thirty-day suspension to the Claimant was unreasonable. Therefore, we hereby order that the thirty-day suspension of the Claimant be reduced to a fifteen-day suspension and that the Claimant be made whole for the additional time that he was off. In addition, the Claimant should be issued a written warning indicating to him that the workplace is not a debating society; and once he receives a direct order, he should “obey now, and grieve later.” That is the rule that the Claimant must follow to avoid future discipline.

AWARD:

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

PLB 6239
Award 64

that he was off work.



PETER R. MEYERS
Neutral Member

Dated: 10/17/06